(15,496.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

No. 1112.

THE PITTSBURG, CINCINNATI AND ST. LOUIS RAILWAY COMPANY AND THE PENNSYLVANIA RAILROAD COMPANY, APPELLANTS,

vs.

THE KEOKUK AND HAMILTON BRIDGE COMPANY.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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1 In the United States Circuit Court, Northern District of Illinois, Northern Division, October Term, A. D. 1889.

THE KEOKUK AND HAMILTON BRIDGE COMPANY
vs.
THE PITTSBURGH, CINCINNATI AND ST. LOUIS RAILway Company and The Pennsylvania Railroad Company. } In Chancery.

Bill of Complaint.

Bill. Filed Sept. 12, 1889.

To the honorable the judges of the circuit court of the United States for the seventh judicial circuit, in chancery sitting:

Your orator, The Keokuk and Hamilton Bridge Company, a corporation existing under the laws of the States of Illinois and Iowa, and a citizen of Illinois, complains and says, that said corporation is composed of two other corporations, to wit: The Keokuk and Hamilton Mississippi Bridge Company, a corporation organized under the laws of the State of Iowa, and the Hancock Bridge Company, a corporation organized under the laws of the State of Illinois, consolidated under the name of the Keokuk and Hamilton Bridge Company, with authority, under the laws of said States and an act of Congress, entitled "An act to authorize the construction of certain bridges, and to establish them as post-roads," approved July 15, 1866, to construct, maintain and operate a railroad and wagon bridge across the Mississippi river, between Keokuk, Iowa, and Hamilton, Illinois, and connect the same by railroad, or otherwise, with any road or roads, railroad or railroads, terminating, or approximating, to such bridge, or bridges, within the State of Illinois or the State of Iowa; that the defendant, The Pennsylvania Railroad Company, is now, and was at the time of the execution of the contracts hereinafter mentioned, a corporation organized under the laws of the State of Pennsylvania, and a citizen of said State, and then owned and operated, and still owns and operates, a railroad extending from Pennsylvania to Pittsburgh in said State, where it unites and connects with the railroad of the defendant, The Pittsburgh, Cincinnati and St. Louis Railway Company, a citizen of Pennsylvania, to which your orator, for the sake of greater brevity, will hereafter refer in this bill as the Pittsburgh Company, whose railroad, at the time of the execution of the contracts hereinafter mentioned, ever since and now, extends from the city of Pittsburgh, in the State of Pennsylvania, to the city of Columbus, in the State of Ohio, where, at the time of the execution of the bridge contract hereinafter mentioned, it united and formed a connection with the railroad of the Columbus, Chicago and Indiana Central Railway Company, then a citizen of the State of Ohio, to which your orator will hereinafter, for the sake of brevity, refer as the Columbus Company; that said Pittsburgh Company was formed by the consolidation of the Pan Handle Company, a

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corporation organized under the laws of Pennsylvania, the Holiday's Cove Railroad Company, a corporation organized under the laws of the State of West Virginia, and the Steubenville and Indiana Railroad Company, a corporation organized under the laws of Ohio; that the Columbus Company was a corporation formed in 1867, by the consolidation of the Columbus and Indiana Central Railway Company, a corporation existing under the laws of Ohio and Indiana, and the Chicago and Great Eastern Railway Company, a corporation existing under the laws of Indiana and Illinois, whose railroad extended from Columbus, Ohio, to the city of Chicago and to the west line of the State of Indiana, where it united and connected with the Toledo, Peoria and Warsaw railroad, which extended from its connection with the railway of the Columbus Company at the State line between Indiana and Illinois, to Hamilton, Illinois. Your orator further shows that the Des Moines Valley railroad, a corporation existing under the laws of Iowa, at the time of the execution of the bridge contracts hereinafter mentioned, owned and operated a railroad extending from Keokuk to Des Moines, Iowa, and that, at the same time, the railroad of the Toledo, Wabash and Western Railway Company, a corporation existing under the laws of Ohio, Indiana and Illinois, extending from Toledo, Ohio, to Camp Point, Illinois, with a branch to Hamilton, Illinois, and made connections with the Columbus, Chicago and Indiana Central railway at Logansport, Indiana.

3 Your orator further shows that, on or about the 16th day of February, 1869, an agreement dated January 19th, 1869, was entered into between the Toledo, Peoria and Warsaw Railway Company, party of the first part, the Des Moines Valley Railroad Company, party of the second part, the Columbus, Chicago and Indiana Central Railway Company, party of the third part, the Toledo, Wabash and Western Railway Company, party of the fourth part, and your orator, party of the fifth part, whereby, among other things, your orator agreed to construct across the Mississippi river at Keokuk, Iowa, a substantial wrought-iron bridge, suitable for the transit of railway trains, to lay a track upon said bridge and connect the same with railways belonging to the other parties to said agreement, and to maintain and keep in repair said bridge and track in perpetuity, so that trains might safely cross over said bridge.

Your orator further shows that, by said agreement, it granted to the other parties thereto, in perpetuity, the right to the use of said bridge for the purpose of passing their passenger and freight trains across the Mississippi river. In consideration whereof the other parties to said contract agreed, among other things, to pay your orator certain rates for the transportation of freights across said bridge, as established by a schedule attached to said agreement and made part thereof, which provided, among other things, that the aggregate net earnings from freight in any one year should not fall below the sum of eighty thousand dollars, to your orator, and in case the said sum of eighty thousand dollars was not reached at the end of any year under the schedule rate, then the other parties

to said agreement agreed to make up to your orator such deficiency, each of the said parties for itself, and not for the others, paying said deficiency in proportion to the tonnage it had passed over said bridge, each being responsible for itself, and not for the others, all of which will more fully appear by reference to said agreement and the schedule thereto attached, copies of which are hereto annexed, marked Exhibit A, and prayed to be taken as part of this bill.

And your orator further shows that, although said agreement purports to have been executed on the 19th day of January, 1869, it was not, in fact, executed by the said Columbus Company till some time afterward, and then only at the request of the said Pittsburgh Company and the Pennsylvania Railroad Company, which companies, on or about the 29th day of January, 1869, by virtue of a lease and contract made by the said Columbus Company, to and with the said Pittsburgh Company and the Pennsylvania
4 Railroad Company, bearing date the 22d day of January, 1869, became possessed of the railway and property of said Columbus Company, a *a* copy of which lease and contract is herewith filed, marked "Exhibit B," and prayed to be taken as part of this bill.

And your orator further shows that the said request of the said Pittsburgh Company and of the said Pennsylvania Railroad Company was in writing, bears date February 16, 1869, is addressed to B. E. Smith, president of the said Columbus Company and, after referring to a proposed contract between the Toledo, Peoria & Warsaw Railway Company, party of the first part, the Des Moines Valley Railway Company, party of the second part, the Columbus, Chicago and Indiana Central Railway Company, party of the third part, the Toledo, Wabash and Western Railway Company, party of the fourth part, and your orator, party of the fifth part, being the same contract hereinbefore first above mentioned, for, among other things, the construction and use of a wrought-iron bridge across the Mississippi river at Keokuk, Iowa, which contract was under negotiation, but unexecuted, by the Columbus Company, at the date of the final execution of the contract and lease of said last-named company's railroad and property to and with the Pittsburgh Company, and the Pennsylvania Railroad Company, and was not included among the contracts of said Columbus Company, assumed by the lessee under their lease from said last-mentioned company, on behalf of said lessee, the Pittsburgh Company, and the Pennsylvania Railroad Company, party to said lease and contract, requests the said B. E. Smith, president of said Columbus Company, officially as such president, to execute said bridge contract, with the understanding that the said lessee and Pennsylvania Railroad Company should assume all the liabilities and obligations, and be entitled to all the benefits of said bridge contract the same as if it had been specifically named and made a part of the ninth article of the said lease and contract of the Columbus Company, to and with the Pittsburgh Company, and the Pennsylvania Railroad Company, bearing date the 22d of January, 1869, as will more fully appear by reference to said written request, a copy of which is

hereto annexed, marked "Exhibit C," and prayed to be taken as part of this bill.

And your orator further shows, that in and by the ninth article of said lease and contract hereinbefore mentioned, the said Columbus Company assigned and transferred to the said Pittsburgh Company all its right and interest in certain contracts therein mentioned, and the said Pittsburgh Company assumed and agreed, at its own risk and expense, to carry out each and all said contracts according to their respective tenors and legal liabilities, receiving and enjoying all benefits to be derived therefrom, and by the 16th article of said lease and contract the said Pennsylvania Railroad Company, for a consideration therein expressed, guaranteed to said Columbus Company that the said Pittsburgh Company would, in good faith, do and perform all and singular the matters and things which, by said lease and contract, it had covenanted and agreed to do, and, upon any failure or default of the said Pittsburgh Company to keep and perform any and all of its said agreements and covenants, it, the said Pennsylvania Railroad Company, would, upon notice to it in writing of the kind and nature of such failure or default, do, keep and perform the same for and on behalf of the said Pittsburgh Company.

And your orator further shows, that on or about the first day of February, 1870, a further agreement was entered into between the parties to said lease and contract, dated January 22, 1869, modifying and varying, in some respects, the terms and conditions of said original lease and contract, a copy of which further agreement is herewith filed, marked "Exhibit D," and prayed to be taken as part of this bill; that, by article 5 of said further agreement, it was provided that the annual gross earnings mentioned in the sixth article of the original agreement should be held to mean the annual gross revenues of the Columbus Company, after the deduction therefrom, among other things, of all *pro rata* bridge tolls.

And your orator further shows, that on or about the 6th day of June, 1871, and before said bridge had been accepted by the bridge company from the contractors who constructed the same, and before it was completed, the parties to said original bridge contract entered into an agreement commonly known as a first amendment to said original agreement, and modifying the same in some respects, a copy of which first amendment is hereto annexed, marked "Exhibit E," and prayed to be taken as part of this bill; that, by said first amendment, it was, among other things, agreed that, instead of the railway companies, parties to said original bridge contract, making good any sum necessary to net your orator from railway freight traffic over said bridge the sum of eighty thousand dollars per annum, *pro rata*, in proportion to the tonnage passed over the bridge by each railway company, the deficiency, if any, necessary to be paid, in order to produce to your orator at the rate of eighty thousand dollars per annum from railway freight traffic, should be made good by each of the four railway companies, to wit: The Toledo, Wabash and Western; the Toledo, Peoria and Warsaw; the Des Moines Valley; and the

Columbus, Chicago and Indiana Central Railway Companies, by each for itself, and not for the others, paying one-fourth part of the deficiency, if any.

And it was further agreed, among other things, by said first amendment, that, in addition to the payment of tolls monthly upon traffic as provided in the original contract, upon the first day of March and September in each year, settlements for the previous six months should be made, and the amounts required to net your orator from railroad freight traffic the sum of forty thousand dollars for the said previous six months, should be promptly paid over to the treasurer of your orator by the railroad companies severally, who were parties to said contract, each paying one-fourth of said deficiency.

And your orator further shows, that on or about November 25, 1871, the parties to said original bridge agreement, dated January 19, 1869, and said first amendment thereto, dated June 6, 1871, entered into a further agreement, commonly known as a second amendment to, or modification of, said previous contracts of January 19, 1869, as amended June 6, 1871, by which second amendment, among other things, provision was made for the application of the net revenues of your orator, fixing a limit to the amount of the same, and providing that payments made under the previous contracts by the railroad companies, parties thereto, toward making up the sum necessary to meet the bonded interest of your orator, the obligation to do which was reaffirmed, should be considered as advances to be paid out of the first surplus revenues of your orator, after payment of the bonded interest and expenses, before any dividends were made upon the capital stock, and providing also for a lease by your orator on certain conditions of its bridge and approaches to said railroad companies, the parties to said previous contracts, all which will more fully appear by reference to said second amendment, a copy of which is hereto annexed, marked "Exhibit F," and prayed to be taken as part of this bill. And your orator further shows, that said first and second amendments were each entered into by the said Columbus Company at the request in writing of the said Pittsburgh Company and the Pennsylvania Railroad Company, which said requests were made by the presidents of the said last-mentioned railroad companies respectively, in communications addressed to the president of the Columbus Company, a copy
7 of which requests is hereto annexed, marked "Exhibit G," and made part of this bill.

And your orator further shows that, soon after the execution of said bridge contract, dated January 19, 1869, it commenced the construction of a bridge across the Mississippi river at Keokuk, Iowa, and completed the same suitable for the transit of railway trains, together with the tracks upon said bridge, connecting the same with railways in accordance with said contract, some time during the year 1871, and has ever since maintained and kept the same in repair.

And your orator further shows, that soon after the execution of said lease and contract bearing date January 22, 1869, between the

Columbus Company, party of the first part, the Pittsburgh Company, party of the second part, and the Pennsylvania Railroad Company, party of the third part, the said Pittsburgh Company took possession of the railroad of the said Columbus Company, with its appurtenances, and, from the time of the completion of said bridge of your orator in 1871, has used and had the benefit of and still continues to use and have the benefit of said bridge of your orator for the passage of passenger and freight trains and business over the Mississippi river at Keokuk, Iowa.

Your orator further shows that, at the time of the execution of the bridge contract by the Columbus Company, at the request of the Pittsburgh Company and the Pennsylvania Railroad Company, copies of which request, together with copies of the bridge contracts, were furnished the Pittsburgh and the Pennsylvania Railroad Companies by the bridge company, the Pennsylvania Railroad Company was seeking, through its ownership and control of the Pittsburgh, Cincinnati and St. Louis Railway Company and the Columbus, Chicago and Indiana Railway Company and their connections, reaching the Mississippi river at Warsaw and Hamilton, opposite Keokuk, Iowa, to secure a share of the large traffic between the Atlantic and Pacific States, crossing the Mississippi river at Keokuk. With that view, the Pennsylvania Railroad Company had previously aided the Toledo, Peoria & Warsaw road, and organized transportation companies and established agencies at Keokuk and other places in the far West for the purpose of procuring traffic over its own road and connecting lines reaching across the continent; that, February 10, 1869, the president and directors of the Pennsylvania Railroad Company, in their report to the share-
8 holders, stated that the restless spirit of their rivals in the East and West rendered it necessary to make connections with the chief trade centers of the West more perfect and less liable in the future to molestation and interruption; that this had been done to a great extent through a lease to the Pittsburgh, Cincinnati & St. Louis Railway Company, guaranteed by the Pennsylvania Railroad Company, of the lines of the Columbus, Chicago and Indiana Central Railroad Company; that the rapid progress made by the Union and Central Pacific railroads indicated the completion of a railroad line across the continent, during the ensuing summer; and that, when opened throughout, the Pennsylvania road and its immediate western connections would present the shortest line to and from the great cities of the Atlantic seaboard, either by way of Chicago, St. Louis, or by an intermediate route in progress from Keokuk westward, connecting with the Union Pacific road near Fort Kearney, and that this advantage would secure to it at least a fair and reasonable share of the large traffic that would be carried between the Atlantic and Pacific States, and that, in a subsequent report of the directors of the Pennsylvania Railroad Company to the shareholders, made February 18, 1871, after referring to the endeavors of rival interests to divert the traffic of the West from the Pennsylvania lines and control its feeders, which they prevented by securing the absolute control of such feeders, they say: "This control

was affected by the least for nine hundred and ninety-nine years of the Columbus, Chicago and Indiana Central Railway, and of the Little Miami railroad, through the Pittsburgh, Cincinnati and St. Louis Railway Company, which your company controls by the ownership of a large majority of its shares."

* * * * * * *

"With a view to give greater simplicity and efficiency to the management of this large western interest, and, as far as practicable, return to our former policy, a charter was obtained from the Commonwealth of Pennsylvania, incorporating the 'Pennsylvania Company,' to which all the interests above mentioned of the Pennsylvania Railroad Company will be transferred on the 1st of March next, and $8,000,000 of the preferred capital stock of the Pennsylvania Company received therefor, which amount covers fully all of our expenditures in this connection. The whole capital of the Pennsylvania Company will consist of $8,000,000 of preferred, and not exceeding $4,000,000 of common stock. All of the profits of the corporation during 1871, after meeting the obligations of the lines leased, are to be used by the managers in perfecting and equipping the railroads transferred to it."

9 Your orator further alleges that, in their report of March 13, 1877, to the shareholders, the directors of the Pennsylvania Railroad Company say: "The lines owned or otherwise controlled by your company west of Pittsburgh, over which all the large through traffic to and from the Pennsylvania railroad east of Pittsburgh is handled, are all operated by the Pennsylvania Company, whose general office is at Pittsburgh."

Your orator further shows that, from the time of the organization of the Pennsylvania Company, at the instance of the Pennsylvania Railroad Company, till the present time, the former has been and now is under the absolute control of the latter, through which, or railroad companies under its control, it has continuously had, from the time of the execution of the original bridge contract to the present time, the control of a continuous line of road from Philadelphia to the Illinois State line, where, from the time of the completion of the Keokuk and Hamilton bridge, as hereinbefore stated, to the present time, it has had connections with other lines of railroad reaching across the State of Illinois to and across the Mississippi river by way of the railroad and bridge of the Keokuk and Hamilton Bridge Company, which connect with other lines of railroad on the west of the Mississippi river, having connections by railroad reaching across the continent, so that the Pennsylvania Railroad Company owns and controls lines of railroad, which, with their connections, form a continuous line of railroad from the city of Philadelphia, by way of the Keokuk and Hamilton bridge, to the Pacific coast.

And your orator further shows that the aggregate net earnings to your orator from railway-freight traffic across said bridge, and from all other sources, as provided by the said contract, dated January 19, 1869, and the said amendments thereto, has not in any one year amounted to the sum of eighty thousand dollars, the annual

interest upon the said one million of mortgage bonds issued by said bridge company, nor to the sum of forty thousand dollars for any six months ending on the first days of March and September in any year since said bridge was completed and opened for traffic in 1871; that, under and by virtue of the requirements of said original agreement, bearing date January 19, 1869, and the said amendments thereto, the said Pittsburgh Company paid to your orator one-fourth of the sum due on said deficiency of earnings, or guarantee account necessary to make up the difference between the net receipts from freight traffic over said bridge and the sum of forty thousand dollars for the six months previous to the first days of March and September in each year after March 1, 1872, till September 1, 1874, in all $35,101.67, being one-fourth of the entire sum due your orator on said deficiency of earnings or guarantee account prior to September 1, 1874.

And your orator further shows that the said Pittsburgh Company, after September, 1874, failed and refused to make settlements on the first days of March and September in each year, or at any other time, of the amounts required to net your orator from railroad-freight traffic over said bridge, the sum of forty thousand dollars for the previous six months, or to pay your orator its proportion of such deficit as required by said original bridge contract, and the amendments thereto, nor did the Columbus Company, or any one for it, or in its behalf, or in behalf of the Pittsburgh Company, pay said deficit, or any part thereof, but the same remained wholly unpaid, of which fact your orator gave notice in writing on the 6th day of May, 1881, to the said Pennsylvania Railroad Company, and, thereupon, the said deficit remaining wholly unpaid, your orator, on the 25th day of July, 1881, filed its bill of complaint against the said Pittsburgh Company and the Pennsylvania Railroad Company, in the circuit court of the county of Cook, and State of Illinois, on the chancery side thereof, which bill was subsequently amended by making the said Columbus Company a party thereto, which bill, among other things, contained in substance the allegations hereintofore set forth, and further alleged, upon information and belief, that the entire property of the said Columbus Company was subject to a mortgage antedating the execution of said bridge contract, which mortgage was in default, and had due on it more than ten millions of dollars, besides several years of arrears of interest; that complainant was advised said mortgage constituted a prior lien upon the property of said Columbus Company, to any which it could have against said railroad company on account of said deficiency in earnings or guarantee account, and that, even if complainant had a valid claim against said Columbus Company for one-fourth the amount required to make good said deficiency of earnings or guarantee account, a suit against said Columbus Company would be fruitless and unavailing, for the reason that all its property was in the possession of the said Pittsburgh Company under said lease, executed prior to the execution of the said bridge contract by the said Columbus Company, and for the further reason that all of said property, and the lease hereintofore referred to, was

subject to the before-mentioned mortgage, which constituted a prior lien to any claim of complainant, and was for an amount more than sufficient to exhaust said property, and any income to be de-
11 rived from said lease, and that complainant was informed and believed that said Columbus Company was insolvent, and that, if it were possible for it to collect from said Columbus Company the sum due on account of said deficiency in earnings or guarantee account, the amount so collected would constitute a valid claim in favor of said Columbus Company against the said Pittsburgh Company, and the Pennsylvania Railroad Company, which would be a circuitous, unnecessary and expensive proceeding, of no benefit to any of the parties in interest.

Your orator further shows that by said bill it prayed for an account of the amount due and to become due during the pendency of said suit for or on account of said deficiency in earnings or guarantee account, in accordance with said contract, dated January 19, 1869, and said amendments thereto, and for a decree for the same, with interest, against the said Pittsburgh Company, and its guarantor, the said Pennsylvania Railroad Company, and for general relief, and called for answers under oath.

17. And your orator further shows that afterwards the said Columbus Company filed its answer to said bill, in substance, as follows:

And now comes the said Columbus, Chicago and Indiana Central Railway Company, by its president, B. E. Smith, and enters the appearance of said railway company in the above-entitled suit, and for answers to said bill of complaint, says that said bridge contract and the amendments thereto, were entered into by said railway company at the request of its codefendants, the said The Pittsburgh, Cincinnati and St. Louis Railway Company, and the said Pennsylvania Railroad Company, which said companies assumed all the liabilities and obligations, and became entitled to all the benefits of said bridge contract, and the said Columbus, Chicago and Indiana Central Railway Company disclaims any interest in said contract or this suit; that the other said defendants filed their separate answers to said bill, each of which answers denied that the bridge contract and the amendments thereto were executed by the said Columbus Company, at, or by the request of the defendant so answering, as alleged in said bill; alleged and charged the fact to be "that, if any request was made of B. E. Smith, as president of said defendant, The Columbus Company, in that behalf, by any person whomsoever, such request was without proper or lawful authority from this defendant so to do, and that the pretended acts, as alleged in said bill, in that regard, were not the acts of this defendant, but solely the individual act or
12 acts of the person or persons, respectively, who performed them, and, as to this defendant, the same are null and void;" denied that the alleged acts of any person, in writing or otherwise, prior or subsequent to the execution of said lease by such defendant, had made said agreement, dated January 19, 1869, or the modifications thereof, or the amendments thereto, or any of them, binding in any manner whatsoever, upon said defendant; on the con-

trary, said defendant charged the fact to be that no additional consideration moved to said defendant for the pretended assumption of the additional burden sought to be charged against it by the bill of the complainant, in connection with the alleged bridge contract and amendments thereto, and that, as to said defendant, the said alleged contracts and amendments thereto were wholly without consideration and void; alleged that, in pursuance of orders of the said United States circuit court for the District of Indiana, the Pittsburgh Company had since January 1, 1875, paid into the National Bank of Commerce of New York, to the credit of James A. Roosevelt and William R. Fosdick, receivers appointed by the said court to receive the same, the amounts of the net earnings of the said Columbus railway, and was still continuing, in pursuance of said orders, to make such payments, and that the said sums, so paid in pursuance of the said orders, were the only amount- paid by the said Pittsburgh Company, in respect of the use of the said railroad and other premises described in the said lease and contract and amended lease and contract, from the first day of October, 1874, up to that time, or for any part thereof, and constituted the full amounts thereof for which the said Pittsburgh Company admitted any liability; and that, as the same was paid by the Pittsburgh Company, in pursuance of the said notice and litigation and orders of court, said Pittsburgh Company denied that it was in any manner responsible under any alleged liability arising out of the said lease or amended lease, or the said alleged contract with the said bridge company; that on the said 19th day of January, 1869, the date of said alleged bridge agreement, or prior or subsequent thereto, it possessed no power or authority under the laws creating it, * * * to guarantee in perpetuity to the complainant, or any other corporation or person, that the revenues of the complainant should, with respect to such bridge, or the traffic upon or over the same, amount to any specified sum at any period whatever.

19. And your orator further shows that afterward such proceedings were had in said suit, that the same was removed into the circuit court of the United States for the northern district of Illinois, and thereafter each of said defendants, The Pittsburgh Company and The Pennsylvania Railroad Company, filed a further
13 answer, an amended answer and a supplemental answer to said bill, in and by which further answers said respondents, and each of them, among other things, disclaimed any knowledge as to whether or not the said bridge contract was in fact executed by the said Columbus Company, or, if so executed, when it was so executed, or whether the "Exhibit A" attached to said bill as a copy of said bridge contract (which exhibit was substantially the same as "Exhibit A" to this bill of complaint), was in fact a true copy, and put your orator to the proof of each of said matters, of which they and each of them so disclaimed knowledge, and further disclaimed all knowledge as to whether the "Exhibit C," attached to said bill, was a true copy of what they called an alleged request (which "Exhibit C" was substantially the same as "Exhibit C" to this bill of complaint), and put your orator to the proof of the correctness

thereof, and further disclaimed all knowledge as to whether requests were made to the president of the Columbus Company, in the words and figures set out in said bill, to enter into said first and second amendments to said bridge contract, and put your orator to the proof thereof, and this complainant avers that "Exhibit G" to this bill is substantially in the words and figures in which said last-mentioned requests were set out in said former bill of your orator.

Your orator further shows that, by said amended answers to your orator's former bill of complaint, said defendants, and each of them, allege that, at the date of said lease and amended lease, the said Columbus Company had not authority or power by the laws of the State of Indiana to execute any such lease and contract, and that the said Pittsburgh Company had not authority or power by the laws of the State of Ohio to take a lease of a railroad in the State of Indiana. Your orator further shows that by their supplemental answers to said former bill the said defendants, and each of them, alleged that the Columbus Company had not then and never had authority by law to build or operate a railroad having its terminus within two hundred miles of the bridge of complainant, and that said bridge contract and the amendments thereto were and always had been invalid and void for want of legal authority on the part of the said Columbus Company to enter into the same, or either of them, and that the directors and stockholders of said Columbus Company did not, nor did either of said bodies, at any time, authorize the execution of said bridge contract, or either of the amendments thereof, or the use of the seal of their company to evidence the same, and that said bridge contract with the amendments thereof were wholly void for want of authority so conferred
14 on B. E. Smith, president of said Columbus Company. Your orator further shows that a portion of said supplemental answer of said Pittsburgh Company was as follows:

"And, by way of supplemental answer, this defendant says, that heretofore, in the year 1875, proceedings were commenced for the foreclosure of the mortgage described, in the original bill of complaint, as antedating the execution of said bridge contract, * * * in the circuit courts of the United States for the northern district of Illinois, the district of Indiana, and the southern district of Ohio, against the said Columbus, Chicago and Indiana Central Railroad Company and others; and that such proceedings have been had in said causes, * * * that said Roosevelt and Fosdick were appointed and qualified as receivers of all and singular the said mortgaged premises, rights, franchises, and all income of the said Columbus, Chicago and Indiana Central Railway Company, and in obedience to orders of said circuit courts made in the premises, said last-named company, by deeds duly executed, afterward, on May 25 and August —, 1875, duly conveyed said mortgaged premises, rights and franchises, and said income to said Roosevelt and Fosdick, and afterwards decrees were entered therein for the sale of the railway property, rights, and franchises of the said Columbus, Chicago and Indiana Central Railway Company, with the right to the

purchaser to affirm or disaffirm the lease of said railway to this defendant, of which lease the Pennsylvania Railroad Company is guarantor, described in the original bill of complaint filed in this cause.

"And said railway property, rights and franchises, with said right to affirm or disaffirm said lease, were sold upon the 10th day of January, 1883, to William L. Scott, John S. Kennedy and Charles J. Osborn, for a smaller sum than the debt secured by said mortgage; and afterwards, by concurrent decrees of all of said courts, in said foreclosure proceedings, said sale was confirmed, and, * * * afterwards, the officers making such sale * * * were ordered to, and did convey all the railway property, rights, and franchises of said Columbus, Chicago and Indiana Central Railway Company, together with said right to affirm or disaffirm said lease to said Scott, Kennedy and Osborn in fee simple. Thereafter, on February 21, 1883, said purchasers notified this defendant in writing that they disaffirmed said lease, and thereby said lease came to an end and was avoided and ceased to have any legal force and efficiency whatever.

15 "And by other decrees of the circuit court for the district of Indiana, made and entered in said cause wherein this defendant was plaintiff, and said Columbus, Chicago and Indiana Central Railway Company, and said Roosevelt and Fosdick and others were defendants, it has been ordered to pay over all unpaid net earnings of said railway to said purchasers, Scott, Osborn and Kennedy, and that said decrees are in full force, and this defendant is bound to and will execute the same, and has begun and entered upon the execution thereof.

"And this defendant further avers that, in accordance with said decrees, possession of said railroad property, rights and franchises has been surrendered to the said purchasers, and that it has been wholly ousted and evicted from all and singular the premises, rights and franchises leased to it, as aforesaid; and it relies upon the cancellation of said lease and the ouster and eviction as aforesaid, as a full and perfect answer to the relief sought in the bill and amended bill of complaint filed in this cause;" and that said supplemental answer of said Pennsylvania Railroad Company, contained, among other things, allegations substantially the same as those herein alleged to have been contained in said supplemental answer of said Pittsburgh Company. Your orator further shows that replications to said answers were filed, and said cause was referred to a master of said United States circuit court to take proof upon the issues therein, and, upon those proofs and any other evidence that might be taken in said cause, report his conclusions thereon to said court, and that said master afterward reported to said court, among other things, as follows:

"I further report that, from the examination of all of the documents and of the testimony so produced in evidence before me as aforesaid, and from computations made by me, I find as follows:

"First. That all the material allegations of said bill of complaint are sustained by the proofs."

"Second. That it was, in and by an agreement dated the 6th day of June, A. D. 1871, hereinbefore referred to, and made between the Toledo, Wabash and Western Railway Company, the Des Moines Valley Railroad Company, the Toledo, Peoria and Warsaw Railway Company, the Columbus, Chicago and Indiana Central Railway Company, and the complainant herein, The Keokuk and Hamilton Bridge Company, agreed between the parties thereto, that, in
16 addition to the payment of tolls for the use of said railroad bridge, as thereinbefore provided, upon the first days of March and September in each year, settlements for the previous six months' deficiency in the earnings of said Keokuk and Hamilton Bridge Company should be made, and that the amounts required to net the said last-named company the sum of forty thousand dollars ($40,000) from railroad freight traffic for each previous six months should be promptly paid over to the treasurer of the bridge company by said railroad companies so using said bridge in the proportions therein named, to wit, one-fourth part of said ascertained deficiency by each of said companies."

"Third. That under said agreement there is now due and owing said complainant by defendants, The Pittsburgh, Cincinnati and St. Louis Railway Company (as lessee of said Columbus, Chicago and Indiana Central railroad) and its guarantor, the Pennsylvania Railroad Company, as their one-fourth proportionate part of the ascertained deficiency shown to have been existing in the receipts of said complainant company, of the sum required to net said complainant the sum of forty thousand dollars ($40,000) each six months, for the period extending from the first (1st) day of September, A. D. 1874, to the first (1st) day of March, A. D. 1883, the sum of one hundred and eighteen thousand and seventy-six dollars and eighty-nine cents ($118,076.89)."

"Fourth. That there is now due and owing to said complainant by said defendants the sum of twenty-seven thousand nine hundred and twenty-seven dollars and fifty cents ($27,927.50) for interest on the sum so as aforesaid found to be due said complainant from the respective dates when said half-yearly payments became due and unpaid to the first (1st) day of March, A. D. 1883, making a total sum due and payable to the said complainant, The Keokuk and Hamilton Bridge Company as aforesaid, of one hundred and forty-six thousand and four dollars and thirty-nine cents ($146,004.39)."

"Ninth. That said Columbus, Chicago and Indiana Central railway was sold and conveyed to William L. Scott and others, trustees, under decree of foreclosure entered on the 23d day of November, A. D. 1882, in the United States circuit court, and that subsequent thereto, to wit, on the 17th day of March, A. D. 1883, said trustees conveyed same to the Chicago, Saint Louis and Pittsburgh Railroad Company;" and thereafter said defendants, The Pittsburgh
17 Company and The Pennsylvania Railroad Company, filed among other exceptions to said master's report, the following:

"I. For that the said master has exceeded the limits of the au-

thority given by the order of November 4, 1882, as will hereinafter more fully appear."

"II. For that the said master has erred in finding that the material allegations in complainant's bill of complaint are sustained by the proof."

"III. For that the said master has erred in finding that the alleged agreement of June 6, 1871, between certain railway companies and the Keokuk and Hamilton Bridge Company, required the payment of a certain sum of money, one-fourth of which he erroneously finds to be due from the two defendant companies hereinbefore named."

"IV. For that the said master's finding of the sum of $118,076.89 against the Pittsburgh, Cincinnati and St. Louis Railway Company, as lessee of the Columbus, Chicago and Indiana Central Railway Company, is clearly erroneous, said lease having long since ceased to exist; and against the Pennsylvania Railroad Company as its guarantor, is unsustained by the proof and unjustifiable on any construction of the alleged agreements."

"V. For that the said master has erred in the calculation of interest, amounting to $27,927.50, there being no direction for any such computation, and therefore the said master has erred in his alleged total of $146,004.39."

"VIII. For that whereas the agreements of lease and amended lease by and between the Columbus, Chicago and Indiana Central Railway Company, lessor, the Pittsburgh, Cincinnati and St. Louis Railway Company, lessee, and the Pennsylvania Railroad Company, guarantor, made exhibits to the complainant's bill of complaint, were executed by the authority of the directors and stockholders of said lessor and lessee companies, and of the directors of said guarantor company, and have not since been modified in any respect by any agreement of any of said companies, and do not, nor does either of them, contain any provision for the payment of any of the
18 sums sued for in this case, or bind either of said companies to the performance of either of the agreements of January 19, 1869; June 6, 1871, and November 25, 1871, set forth in the complainant's bill and amended bill or any part thereof."

"IX. For that neither the Columbus, Chicago and Indiana Central Railway Company, the Pittsburgh, Cincinnati and St. Louis Railway Company nor the Pennsylvania Railroad Company, ever had authority in law to enter into the alleged agreements set out in the complainant's bill and amended bill, being the same dated January 19, 1869, June 6, 1871, and November 25, 1871, or into either of them."

"X. For that said alleged agreements were not, nor was either of them in fact, authorized by the directors or stockholders of the Columbus, Chicago and Indiana Central Railway Company, or of the Pittsburgh, Cincinnati and St. Louis Railway Company, or of the Pennsylvania Railroad Company."

"XI. For that the written request set forth in the bill, and amended bill, bearing date February 16, 1869, the further written request, relating to a modification dated June 6, 1871, of the alleged

agreement of January 19, 1869, set forth in said bill and amended bill, and the further written request, dated November 29, 1871, each addressed to B. E. Smith, president of the Columbus, Chicago and Indiana Central Railway Company, by Thomas L. Jewitt and Thomas A. Scott, respectively, as president of the Pittsburgh, Cincinnati and St. Louis Railway Company, and J. Edgar Thomson, as president of the Pennsylvania Railroad Company, were the individual acts of said Jewett, Scott and Thomson, respectively, and not of said companies, or either of them, and were not, nor was either of them, authorized, nor has either of said acts been ratified by either of said companies, or by either the directors or stockholders of either of said companies."

"XII. For that the Pittsburgh, Cincinnati and St. Louis Railway Company was ousted and evicted on the first day of October, 1874, and has ever since remained wholly ousted and evicted from its lease and amended lease of the Columbus, Chicago and Indiana Central railway, and from all gains, profits, and income thereof, and from the possession thereof under said lease and amended lease by title antecedent in time and superior in law to that of the lessor thereof, namely, by judicial orders made in proceedings for receivership, foreclosure, and sale of said railway under the mortgage described in complainant's bill of complaint."

19 "XIII. For that no consideration passed to or was received by the Pittsburgh, Cincinnati and St. Louis Railway Company, or the Pennsylvania Railroad Company, or either of them, for entering into or executing either of said alleged agreements set forth in said original and amended bill of complaint, dated January 19, 1869, June 6, 1871, and November 25, 1871, and said agreements are, and each of them is, wholly without consideration in law or fact."

Your orator further shows, that thereafter said cause was argued before said circuit court of the United States on said exceptions to the master's report, and the pleadings and proofs in said cause, and taken under advisement by said court, and that afterward, on the 21st day of January, 1884, the decision and decree of said court was entered of record in said cause, by which decree each and every of said exceptions to the master's report was overruled, the said master's report in all particulars confirmed, and said complainant adjudged to recover of said Pittsburgh Company and said Pennsylvania Railroad Company the sum of one hundred and fifty-three thousand seven hundred and ninety-one dollars and twenty-nine cents, together with costs of suit.

Your orator further shows, that each of said defendants prayed an appeal from said decree to the Supreme Court of the United States, which appeals were allowed and perfected, and that said appeals having been heard by said Supreme Court, afterwards, on the 13th day of May, 1889, by the decision and decree of said Supreme Court, the said decree of said circuit court of the United States was in all things affirmed, all of which matters and things will more fully and at large appear by reference to the record of the proceedings in said suit.

Your orator further shows that said decree has been paid to your orator in full with the interest thereon by said Pittsburgh Company, whereby complainant has been paid by said Pittsburgh Company its proportion of all deficiencies in the amount of the earnings of complainant's bridge required to net to complainant from railroad freight traffic the sum of forty thousand dollars for each six months up to the 1st day of May, 1883.

Your orator further shows that since said 1st day of March, 1883, the net aggregate earnings to your orator from railroad-freight traffic, according to the provisions of said bridge contract and said amendments thereto, have fallen below forty thousand dollars for each and every six months previous to the 1st days of September and March in each and every year to the 1st day of March, 1889; that said Pittsburgh Company has failed and refused to make settlements on the first days of September and March in each year, or at any other time since March, 1883, of the amounts required to net to your orator from railroad-freight traffic over said bridge the sum of forty thousand dollars for the previous six months or to pay your orator its proportion of such deficit as required by said bridge contracts and said amendments thereto, but on demand made has refused and still refuses so to do. And your orator alleges, that, to ascertain the amount due from said Pittsburgh Company by virtue of said bridge contract and the amendments thereto, as its proportion of such deficit since March 1, 1883, involves an examination of the accounts of your orator with each and all of the railroad companies using said bridge for the past six years, and all of the various sums expended by your orator in the operation, repair, maintenance, alteration and care of said bridge during a like period, which examination, owing to its complicity and extent, cannot well and adequately be had in a court of law.

Your orator further alleges that it has caused statements to be made up and furnished the said Pittsburgh Company, of the amount required from it as its proportion of the sum required to be paid your orator for each six months previous to the first days of September and March respectively, from September 1, 1883, to March 1, 1889, inclusive, in order to net to your orator the sum of forty thousand dollars from railroad freight traffic during said period, but said Pittsburgh Company has denied its obligation to pay the same or any part thereof; that the total amount due complainant from said Pittsburgh Company on said account, as shown by said statements, in sixty-one thousand six hundred and twenty-two dollars and seventy-eight cents, besides interest.

And your orator further shows that on the 20th day of August, 1889, it gave notice in writing to said Pennsylvania Railroad Company of the said failure of said Pittsburgh Company to pay to your orator the said sum of sixty-one thousand six hundred and twenty-two dollars and seventy-eight cents and interest, and demanded of said Pennsylvania Railroad Company that it pay said sum, with interest, as will more fully and at large appear by reference to a

copy of said written notice hereto attached, marked "Exhibit K," which your orator prays may be taken as a part of this bill.

And your orator alleges, on information and belief, that the statements of the said supplemental answers, and master's report hereinbefore set forth, as to the sale under foreclosure decrees of
21 the property, rights and franchises of said Columbus Company, and the subsequent transfer of the same to the Chicago, St. Louis and Pittsburgh Railroad Company, are true, and that said Columbus Company has now no property whatever; that in said former suit, said Columbus Company disclaimed any interest in the matter in controversy, and has now no interest or no substantial interest in this suit, and, if made party hereto, would be only a formal party herein; and your orator further alleges, on information and belief, that said Columbus Company has now no property, does no business, and has no office in this State, nor, as your orator is informed and believes, has it any officer in this district on whom process can be served; that B. E. Smith, who was, as your orator is informed and belives, the last person elected president of said Columbus Company, is deceased; and that the Columbus Company is in fact, if not in law, dissolved and has now no other, if any, than a nominal existence, for all which reasons, your orator does not make said Columbus Company a party defendant hereto.

Your orator further alleges, on information and belief, that said Scott, Kennedy and Osborne, the purchasers of the property, rights and franchises of the Columbus Company at the foreclosure sale, hereinbefore mentioned, did not make said purchase for themselves, but in the interest of said Pennsylvania Company, and with the understanding and intention that they should thereafter convey the same to a corporation organized in the interest of and controlled by said Pennsylvania Company; that said Chicago, St. Louis and Pittsburgh Railroad Company is a corporation organized in the interest of said Pennsylvania Company for the purpose of acquiring by conveyance from said purchasers, Scott, Kennedy and Osborne, the said property, rights and franchises of said Columbus Company, and using, operating and controlling the same in the interest and under the control of said Pennsylvania Company, which had, at the time of said conveyance to said Chicago, St. Louis and Pittsburgh Railroad Company, ever since has had and now has, the complete control and management of said Chicago, St. Louis and Pittsburgh Railroad Company.

Your orator further alleges that neither said sum of sixty-one thousand six hundred and twenty-two dollars and seventy-eight cents, nor any part thereof, has been paid to it by any of said railroad companies, or by any one else, but the same remains due and wholly unpaid, and that, even if it were possible for your orator to collect said amount, or any part thereof, from said Columbus Company, the amount so collected would constitute a valid claim in favor of said Columbus Company against said Pittsburgh
22 Company and said Pennsylvania Railroad Company, which would be a circuitous, unnecessary and expensive proceeding, of no benefit to any of the parties in interest, and that, by

reason of the premises, the said Pittsburgh Company and the said Pennsylvania Railroad Company became liable in equity to pay promptly to your orator one-fourth of the amount required to net your orator from railroad traffic over said bridge the sum of forty thousand dollars for each six months previous to the first days of September and March respectively in each year, since said 1st day of March, 1883.

To the end, therefore, that the said Pittsburgh Company and said Pennsylvania Railroad Company, defendants hereto, may answer upon oath, according to the course and practice of this court, all and singular the premises, and that as fully as if especially interrogated, according to the best of their respective knowledge, information and belief; and more especially, that they may answer and set forth:

First. Whether this complainant did not heretofore bring a suit in chancery as herein alleged.

Second. Whether said former bill of your orator did not contain substantially the allegations which in this bill it is alleged were contained therein, and if said defendants, or either of them shall deny that any of said allegations were contained in said former bill, that such defendants, or defendant, shall specifically point out what allegation, or allegations, they, or it, denies to have been contained in said former bill.

Third. Whether such answers, containing such allegations, denials and claims, as herein alleged, were not filed in said former suit, and, if not, specifically point out in what particular, or particulars, the allegations of this bill in that regard are incorrect.

Fourth. Whether such proceedings were not had in said former suit as herein alleged, and, if not, specifically point out in what particular, or particulars, said proceedings are incorrectly stated herein.

Fifth. Whether "Exhibits A, B, C, D, E, F, G" to this bill are not substantially correct copies of the various documents, respectively, of which said exhibits purport to be copies, as said documents were proved in said former suit.

23 Sixth. Whether complainant did not, on or about the 20th day of August, 1889, serve said Pennsylvania Railroad Company with a notice of which "Exhibit K" is a copy.

Seventh. Whether the allegations herein contained, as to the said purchase of said Scott, Kennedy and Osborne, and the subsequent conveyance by them to said Chicago, St. Louis and Pittsburgh Company, and as to the organization, management and control of said last-mentioned company, are true, and, if not, specifically point out in what particular, or particulars, the same, or any of them, are not true.

And your orator further prays that said defendants, and each of them, may be adjudged to be estopped to allege in defense of this suit any of the matters or things alleged by them, or adjudicated upon by the court, in said former suit, and especially that they, and each of them be adjudged estopped to deny that they, or either of them, had power and authority to enter into said bridge

contract and said amendments thereto, or that said contract and amendments were not entered into at their request, and for their benefit and upon sufficient consideration, or to allege that said contract, as amended, has ceased to be binding on them by reason of any amendment of said lease and contract between said Columbus Company and said Pittsburgh Company and said Pennsylvania Railroad Company, or because said Pittsburgh Company is no longer in possession of said railway and property of said Columbus Company; and that an account may be taken of the amount due your orator, or to become due, up to the termination of this suit, under or in virtue of said bridge contract, dated January 19, 1869, and the said amendments thereto, for or on account of said deficiency in earnings or guarantee account, in accordance with said contract, dated January 19, 1869, and the amendments thereto, from the said Pittsburgh Company and its guarantor, the said Pennsylvania Railroad Company, including, as well, what shall hereafter become due and payable, as the sum which is now due and payable, and that in such account the said Pittsburgh Company, and the Pennsylvania Railroad Company, as its guarantor, may be charged with one-fourth of the entire sum due on said deficiency in earnings or guarantee account for the whole period from the 1st day of March, 1883, to the termination of this suit, and that such interest may be charged in such account as may be proper, and that the balance due upon such accounting from the said Pittsburgh Company and the Pennsylvania Railroad Company, after crediting them with such payments on account, as shall hereafter be duly made during the pendency of this suit, may be ascertained
24 and determined, and that the said Pittsburgh Company, and the Pennsylvania Railroad Company, respectively, may be adjudged and decreed to pay to your orator the amount found to be due and owing from them respectively upon such accounting, with interest, together with the costs of this suit, and that your orator may have such other and further relief in the premises as may be agreeable to equity, and the nature of its case may require.

May it please your honors to grant unto your orator a writ of subpœna of the United States of America, issuing out of and under the seal of this honorable court, directed to the said Pittsburgh, Cincinnati and St. Louis Railway Company, and the Pennsylvania Railroad Company, defendants, commanding them, on a day certain, therein to be named, and under a certain penalty, to be and appear in this honorable court, then and there to answer all and singular the premises, and to stand to, abide by and perform such order, direction and decree therein as to your honors shall seem meet, and agreeable to equity and good conscience.

And your orator will ever pray, etc.

THE KEOKUK AND HAMILTON BRIDGE COMPANY,
By TRUMBULL, WILLITTS, ROBBINS & TRUMBULL,
Sol's for Complainant.

LYMAN TRUMBULL, *Of Counsel.*

25 EXHIBIT A TO BILL.

Agreement.

This agreement, made and entered into this nineteenth day of January, one thousand eight hundred and sixty-nine, between the Toledo, Peoria and Warsaw Railway Company, party of the first part; the Des Moines Valley Railroad Company, party of the second part; the Columbus, Chicago and Indiana Central Railway Company, party of the third part; the Toledo, Wabash and Western Railway Company, party of the fourth part, and the Keokuk and Hamilton Bridge Company, party of the fifth part, witnesseth: that the party of the fifth part agrees to construct across the Mississippi river at Keokuk, Iowa, a substantial wrought-iron bridge, which shall be built upon stone piers in accordance with the specifications made by J. H. Linville, chief engineer of the party of the fifth part, and approved by the other parties hereto, suitable for the transit of railway trains; to lay a track upon said bridge and connect the same with railways belonging to the parties hereto in such manner and at such points as may hereafter be agreed upon. The party of the fifth part further agrees to maintain and keep in repair, in perpetuity, the said bridge and track, so that trains may safely cross at all times, except when repairs make it necessary that crossing should be temporarily suspended, or when it shall be necessary to have the draw open for the passage of boats.

The party of the fifth part hereby grants to the parties of the other parts in perpetuity the right to use said bridge for the purpose of passing its passenger and freight trains across the Mississippi river. The parties of the other part shall have the exclusive right to make the time-table for passing their trains over said bridge.

The party of the fifth part further agrees to begin the construction of said bridge within thirty days from the date hereof, and to prosecute the work diligently, so as to ensure its completion at the earliest practicable time, not later than January 1st, one thousand eight hundred and seventy.

26 It is understood that said bridge shall be constructed so as to pass wagons, foot passengers, and general traffic, the revenues from which shall belong exclusively to the party of the fifth part; but wagons and general traffic shall not be permitted on said bridge during the passage of railroad trains. In consideration of which the parties of the first, second, third and fourth parts agree that they will in perpetuity use said bridge for the crossing of their passenger and freight trains and business over the Mississippi river at Keokuk; said crossing to commence the day the bridge is ready, and to be continued in perpetuity at all times when the bridge is in condition to cross.

The parties of the first, second and fourth parts further agree to keep books of account, which shall show the number of passengers, and the number of tons of freight transported monthly over said bridge, which books shall be open at all times to the inspection of

the officers and directors of the party of the fifth part, and the parties named shall render monthly statements of said accounts to the party of the fifth part by the tenth day of each month.

The parties of the first, second and fourth parts agree to pay severally, not jointly, as hereinafter stated, for each and every person transported over said bridge by each of them fifteen cents, provided that officers, agents and employés of said railway companies and express and mail agents shall not be paid for.

The rates for transportation of freight across said bridge shall be as per Schedule "A," hereto attached and made part hereof, and paid for severally by each of the railroad companies transporting the same. The moneys for the use of said bridge shall be paid on the tenth day of each month to the party of the fifth part.

In case the party of the fifth part allows any other railway companies than these named herein to use said bridge, it shall furnish to the parties of the other parts monthly statements of the freight tonnage transported by said companies, and it is agreed that if any other railway company is authorized to transport across said bridge at lower rates than herein stipulated for, such permission shall, of itself, operate to reduce the rates to be paid by the parties hereto so as to correspond with such lower rates.

It being understood, in case other railway companies use said bridge, that the railways hereto shall have the exclusive right to arrange the time-table for each and every train crossing said bridge; this right to be judiciously exercised, so as not to produce
27 inconvenience to the traveling public; should dispute arise as to the arrangement of trains, competent and disinterested arbiters shall be chosen to decide the same—one by the complaining party and one by the other parties hereto, these two to select a third—the decision of the arbiters to be final.

The party of the fifth part agrees that it will pay all taxes on said bridge; that it shall keep said bridge in good repair, and will signal the trains of the railway companies hereto at all times, day and night, employing for that purpose skillful signalmen, and will keep the drawer closed, except when open for the passage of boats. And the party of the fifth part shall have the general supervision and control of said bridge.

The party of the fifth part shall be responsible for all damages legally sustained by other parties or persons by reason of the erection, maintenance and management of said bridge, or by reason of negligence of the party of the fifth part, or its officers or servants in the care, management or operation thereof; and will save the parties of the first, second, third and fourth parts harmless from claims of damages from outside parties arising from a violation of the party of the fifth part under this clause.

The railway companies hereto to be at the expense of operating its own trains, and all expenses incident thereto, such as switching, &c., and they agree that their trains shall run no faster than six miles per hour upon said bridge.

The parties of the first, second, third and fourth parts stipulate that they will make no other contract with any other company or

person whereby passengers or freight shall or can be transported across the Mississippi river at Keokuk, or any place north or south within twenty miles thereof, except over said bridge; and in case passengers or freight are transported by said railway companies, directly or indirectly, in any other manner, when said bridge is in condition for the transit of trains, the said railway companies shall pay to the party of the fifth part the same amount, and at the same rate, as if transported over said bridge; but this clause is not intended to operate so as to prevent the parties of the first, second, third and fourth parts from making contracts for receiving passengers and freight brought to Keokuk by water navigation from points on the river above and below, or delivering passengers or freight to boats bound to places on the river above or below Keokuk.

28 In witness whereof we have hereunto affixed our hands this day and date above written, and affixed thereto the seals of our respective corporations.

THE TOLEDO, PEORIA AND WARSAW RAILWAY COMPANY.
CHARLES L. FROST, *President.*
THE DES MOINES VALLEY RAILROAD COMPANY.
[SEAL.] D. W. KILBOURNE, *President.*
THE COLUMBUS, CHICAGO AND INDIANA CENTRAL RAILWAY COMPANY,
[SEAL.] By B. E. SMITH, *President.*
THE TOLEDO, WABASH AND WESTERN RAILWAY COMPANY.
[SEAL.] A. BOODY, *President.*
THE KEOKUK AND HAMILTON BRIDGE COMPANY,
[SEAL.] By H. T. REID, *President.*

29 SCHEDULE "A."

The railroad tonnage of all parties over said bridge for each year, from the first day of January to the thirty-first of December, inclusive, shall be ascertained.

If the tonnage in any one year does not exceed 80,000 tons, the rate shall be 5c. per 100.

If it exceeds 80,000 and does not exceed 90,000 tons, the rate shall be 4.8c. per 100.

If it exceeds 90,000 tons, and does not exceed 100,000 tons, the rate shall be 4.7c. per 100.

If it exceed 100,000 tons, and does not exceed 110,000 tons, the rate shall be 4.5c. per 100.

If it exceed 110,000 tons, and does not exceed 120,000 tons, the rate shall be 4.3c. per 100.

If it exceed 120,000 tons, and does not exceed 130,000 tons, the rate shall be 4.2c. per 100.

If it exceed 130,000 tons, and does not exceed 140,000 tons, the rate shall be 4c. per 100.

If it exceed 140,000 tons, and does not exceed 150,000 tons, the rate shall be 3.8c. per 100.

If it exceed 150,000 tons, and does not exceed 160,000 tons, the rate shall be 3.7c. per 100.

If it exceed 160,000 tons, and does not exceed 170,000 tons, the rate shall be 3.5c. per 100.

If it exceed 170,000 tons, and does not exceed 180,000 tons, the rate shall be 3.4c. per 100.

If it exceed 180,000 tons, and does not exceed 190,000 tons, the rate shall be 3.3c. per 100.

If it exceed 190,000 tons, and does not exceed 200,000 tons, the rate shall be 3.1c. per 100.

If it exceed 200,000 tons, and does not exceed 210,000 tons, the rate shall be 3c. per 100.

And so on, after 210,000 tons are reached, the rate for the whole being reduced one mill per 100, as the aggregate tonnage is found to increase by 10,000 tons, until an aggregate tonnage of 270,000 tons are reached, then the reduction shall be one mill per 100, as the aggregate tonnage is found to increase by 20,000 tons, until an aggregate tonnage of 350,000 tons are reached. And if the tonnage in any one year exceed 350,000 tons, the rate shall be 2c. per 100, provided that the aggregate net earnings from freight in any one year shall not exceed one hundred and fifty thousand dollars for the whole freight transported by any and all railway companies, except as hereinafter provided, to wit, that other companies than the parties hereto which are allowed the use of the bridge shall pay the schedule rates, the lowest rates being two (2) cents per 100, and the surplus revenue beyond one hundred and fifty thousand dollars shall be divided, one-half to the railroad companies hereto, to be divided between them in proportion to their respective tonnage over said bridge, and the other to the party of the fifth part; nor shall the aggregate net earnings from freight in any one year fall below the sum of eighty thousand dollars ($80,000), to the said parties of the fifth part.

And in case the said named sum is not reached at the end of any year under the schedule rate, then the parties of the first, second, third and fourth parts shall make up to the party of the fifth part such deficiency, each of the said parties for itself and not for the others, paying said deficiency in proportion to the tonnage it has passed over said bridge, each being responsible only for itself and not for the others; provided, further, that during the next or any subsequent year following such deficiency, the rates may be increased at the option of the railway companies hereto. And provided, further, that the party of the fifth part shall not contract with any person or company for the transportation of freight or passengers at a less rate than herein provided for without the consent of the railway companies hereto.

No increase of tonnage shall cause a decrease in the aggregate annual revenue from freight.

31 The ton shall be reckoned 2,000 pounds. Persons shall not be accounted in the weight, as they are to be paid for per individual.

The payments provided for in this contract shall be made commencing at the rate of 5c. per 100, and so continuing until it be ascertained that the total tonnage will permit a lower rate to be charged as above provided. And when any lower rate is reached it shall be continued until or unless the total tonnage shall be such that the rate should be changed to comply with the above rule, when a change shall be made, and so on, from time to time.

Provided that all materials and supplies used and to be used upon lines of railway aforesaid by the railways hereto shall in perpetuity be transported over said bridge without charge, and shall not be taken into account in ascertaining the annual tonnage passing over said bridge. In consideration of which the said railway companies agree to transport without charge over any railroad operated by them any and all materials to be used in the maintenance and repair of said bridge.

At the end of each year the accounts shall be adjusted, so that the total payments for the year will amount to the sum due, according to the rate above provided for.

Illustrated as follows, viz:

170,000	tons	@ 3.5	$119,000
180,000	"	" 3.4	122,400
190,000	"	" 3.3	125,400
200,000	"	" 3.1	124,000
210,000	"	" 3.0	126,000
220,000	"	" 2.9	127,600
230,000	"	" 2.8	127,600
240,000	"	" 2.7	128,000
250,000	"	" 2.6	129,600
260,000	"	" 2.5	130,000
270,000	"	" 2.4	129,600
290,000	"	" 2.3	133,000
310,000	"	" 2.2	136,400
330,000	"	" 2.1	138,600
350,000	"	" 2.0	140,000

And so on, until $150,000 is reached.

32 EXHIBIT B.

Lease and contract and amended lease and contract between the Columbus, Chicago and Indiana Central Railway Company, the Pittsburgh, Cincinnati and St. Louis Railway Company, and the Pennsylvania Railroad Company.

Indenture made and entered into, this twenty-second day of January, anno Domini one thousand eight hundred and sixty-nine (1869), by and between the Columbus, Chicago and Indiana Central Railway Company, party of the first part, and the Pittsburgh,

Cincinnati and St. Louis Railway Company, party of the second part, and the Pennsylvania Railroad Company, party of the third part, witnesseth:

Article I. That the party of the first part, in consideration of the covenants and agreements of the parties of the second and third parts hereinafter contained, doth hereby let, lease, and demise to said party of the second part, its successors and assigns, the entire railroad of the party of the first part, lying, being, and extending from its terminus, in the city of Chicago, in the State of Illinois, through the county of Cook, in said State, southward to the State of Indiana, and through the counties of Lake, Porter, La Porte, Starke, Pulaski, Cass, Howard, Tipton, Madison, Henry, and Wayne, in Indiana, to the city of Richmond, and thence eastward to the State of Ohio and through the counties of Preble, Darke, Miami, Champaign, Union, Madison, and Franklin, to the city of Columbus, Ohio; and also extending from the city of Richmond aforesaid, westward through the counties of Wayne, Henry, Hancock, and Marion, to the city of Indianapolis, in Indiana; and also extending from the main line aforesaid, at a point in Miami county, Ohio, westward through the county of Darke, in Ohio, to the Indiana State line at Union City, and thence westward through the counties of Randolph, Jay, Blockford, Grant, Miami, Cass, White, Jasper, and Newton, in Indiana, to the line of the State of Illinois, in the direction toward Peoria; altogether being, in the length of railways, about five hundred and eighty-six and one-half (586½)
33 miles—about four hundred and twenty-four and one-half (424½) miles thereof being in the State of Indiana, about one hundred and thirty-four and one-half (134½) miles thereof being in the State of Ohio, and about twenty-seven and one-half (27½) miles thereof being in the State of Illinois—with all its franchises, equipments, property, tolls; and all its lands, tenements, buildings, fixtures, machinery connected with or used in the using or operating of said railway or appurtenant thereto; and all its rails, ties, fuel, fencing, and erections; and all its rights of way and easements; and all cars, engines, and tools owned by said party of the first part on the taking effect of this lease, and all rents accruing to it thereafter, together with all the rights, privileges, and appurtenances thereunto belonging, with the right to use the franchises and privileges of every character, either on the line of the road or elsewhere; also, the interest of the party of the first part in the line of road extending from Cambridge to Rushville, as well in the road as in bonds to be issued to said party of the first part, for advances made in the construction of said road; it being understood that the entire revenues from said road, to which said party of the first part would be entitled had this lease not been made, shall enter into and become a part of the gross earnings of the railroad of the party of the first part hereby demised. In case said bonds shall be paid, then the money so paid shall be used in construction purposes on the line of the railroad of the party of the first part, for the mutual benefit of the parties hereto, and without charge to said party of the first part, together with the use of all its rights, property, and

interest in any other railroad, wherever situated; provided, however, that this conveyance aforesaid shall not include nor operate to transfer any lands, property, or other matters which said company now owns or may hereafter acquire, that need not be used for any purposes incident to the management or operation of said railroad, or the repair thereof, or in the business of said railway company; nor shall these presents in any way prohibit the party of the first part from selling and conveying, or otherwise disposing of the same, and of all the proceeds thereof, nor from using for its own purposes, as its own property, all moneys, bonds, and other securities, all credits, all dues, whether in notes, accounts, or otherwise, held, or to which it is entitled, on the taking effect of this lease or thereafter; provided, that the foregoing-named assets shall be applied to the payment of the floating debt of the company of the party of the first part, so far as the same shall be required therefor.

To have and to hold, to the said party of the second parf, its successors and assigns, the above-leased and demised premises, for the full end and term of ninety-nine (99) years from and after
34 the first day of February, anno Domini one thousand eight hundred and sixty-nine, and renewable from time to time, at the election of said party of the second part, for like periods forever, on the same terms, stipulations, and conditions, but subject, however, to the earlier determination of this lease, as hereinafter provided for.

Art. 2. The said party of the second part, in consideration of the covenants and agreements of said party of the first part herein contained, doth hereby covenant and agree with the said party of the first part, to take under this lease the above-demised premises for the said term of ninety-nine (99) years from and after the first day of February, anno Domini one thousand eight hundred and sixty-nine, with option of renewal, as hereinbefore provided, and further covenants and agrees with said party of the first part, its successors and assigns, as follows, to wit:

Art. III. That it will, at its own cost, risk, and expense, during all the said term, keep, preserve, and maintain the said railroad in good working condition and repair as a first-class railroad, so as to be suitable for the transaction of all business which can reasonably be done thereon, and will in like manner maintain and preserve all the side-tracks and station-houses, and will in like manner maintain tain in good repair and condition all the fixtures, appurtenances, tools, and machinery pertaining to said railroad, and all the property essential to and connected therewith hereby leased; and will in like manner at all times during the continuing of this lease, maintain and preserve all the rolling-stock and equipments hereby leased in as good repair and condition as the same now are; and that it will in like manner, at all times, furnish and keep, for the use of the said railroad, engines, cars, equipments, and rolling stock reasonably sufficient for the business thereof, as the same may increase; and will in like manner at all times during the continuance of this lease, run and operate the said railroad, so as to do and perform in a proper manner all the business which can reasonably

be secured for and done on the same, and will fully perform toward the public all the obligations due to it from the said party of the first part, and will, at its own cost and expense, maintain and run and operate the said railroad to the end that as large an amount of earnings and profits may be made and realized therefrom as can lawfully and reasonably be made and realized under the terms of this lease.

Art. IV. That it will, at all times, place the said railroad to and from all common and competing points accesible by it, and connecting lines on as favorable a basis as to the trade and traffic thereon as may at any time be granted to the road or roads of any other company, and will keep and maintain an efficient organization for the procurement of traffic and business on and over said railroad, and between the seaboard cities and the West.

Art. V. That it shall, at all times during the hereby demised term or terms, have the exclusive right to manage and control said demised railroad and premises, and to regulate and determine the rates of tolls, freights and charges for all the transportation over the whole or any part of the said demised railroad and premises, rents, or other revenues connected therewith; and it shall have full, free and exclusive right to charge and collect all of said rents, tolls, and charges, and to appropriate the same in the way and manner hereinafter mentioned, and shall have, use, exercise, and enjoy all the rights, powers, and authority aforesaid, and all other corporate powers and privileges which can or may be lawfully exercised and enjoyed on or about said demised railroad and premises, as fully, amply, and entirely as the same might or could have been used, exercised, and enjoyed by the party of the first part, had this lease not been made, and as exclusively, amply, fully, and entirely as the party of the first part have or shall acquire authority by law to grant the same; it being understood and agreed, that all revenues derived from the traffic carried jointly over the roads, or parts thereof, of the parties of the first and second parts hereto, shall be divided *pro rata*, as to the distance moved thereon; except that local rates shall be preserved, as far as practicable, to both said parties.

Art. VI. That in consideration of the premises, the said party of the second part shall, at all times during the hereby demised term, pay, out of the annual gross earnings, all taxes and assessments of every kind, that may be imposed on or be assessed against said party of the first part, on the property hereby leased, including the business done upon said line, in the same manner and to the same extent that said party of the first part would have to pay, if operating its own line; and out of the surplus of said annual gross earnings, the said party of the second part shall be entitled to receive seventy percentum (70 per cent.) for their own sole and exclusive use.

Art. VII. It is mutually covenanted and agreed, that the whole of the balance of said gross annual earnings and revenues, after deducting the taxes and assessments as aforesaid, being thirty per cent.

(30 per cent.) thereof, shall be and the same are hereby appropriated, and shall be applied, to the purposes and paid by the party of the second part, in the way and manner following:

36 First. To the payment of the interest that may accrue after February first, eighteen hundred and sixty-nine, being at the rate of seven per cent. (7 per cent.) on all the mortgage bonds of the party of the first part, to the extent of twenty million of dollars ($20,000,000), in accordance with their respective equities and priorities; and,

Second. To the payment of the interest upon the income bonds of the party of the first part, which may hereafter be issued to the party of the second part, for the purposes of construction, as hereinafter mention. Said interest to be deposited in ample time to meet the accruing coupons, at some bank, trust company, or agency, in the city of New York, as may be agreed upon from time to time by the parties of the first and second parts: Provided, nevertheless, that if the said thirty per cent. (30 per cent.) should not, in any one year, be equal to the sum required for the payment of the interest as aforesaid, then, and in that event, the party of the second part shall and will, at their own cost and expense, and without charge to the party of the first part, pay to said agency or agencies the amount required to pay said interest as the same shall become due and payable.

Third. To the payment of whatever surplus may remain in any one year of said balance of thirty (30) per cent. to the treasurer of the party of the first part, annually, on the first day of March; or if, in the opinion of the said party of the second part, the probable annual surplus shall justify the same, then semi-annually, on the first days of September and March, in each year, for dividends upon the stock, and for such other purposes as the party of the first part may determine.

Art. VIII. In order to provide for the payment or redemption of the said twenty million ($20,000,000) of seven (7) per cent. bonds of the party of the first part, secured by mortgages, the party of the second part covenant and agree that they will provide an annual sinking fund, as required of the said party of the first part, by the terms and conditions of the said mortgages therefor; and upon the redemption and cancellation of the said bonds, the party of the first part covenant and agree that they will, in consideration thereof, pay or issue to the party of the second part, at the option of the party of the second part, bonds at par, bearing seven (7) per cent. interest, for an equal amount, to be secured by a mortgage having a first lien, unless otherwise agreed upon, or issue to the party of the second part shares of the capital stock of party of the first part at par.

37 Art. IX. The party of the first part hereby assigns and transfers to the party of the second part all its right and interest in its contract of the eleventh of March, A. D. eighteen hundred and sixty-eight, with the Terre Haute and Indianapolis Railroad Company *et al.*, and its contracts with the Little Miami and Columbus and Xenia Railroad Company, the Indianapolis, Cincin-

nati and Lafayette Railroad Company, the Indianapolis and Vincennes Railroad Company, stock-yard-track contract at Chicago, and all other of its contracts relating to other roads for transportation, copies of which are hereto annexed; and the said party of the second part assumes and agrees, at its own risk and expense, to carry out each and all said contracts according to their respective tenors and legal liabilities, receiving and enjoying all benefits to be derived therefrom; and also to indemnify and save harmless the said party of the first part, on account of its indorsements on the bonds of the St. Louis, Vandalia and Terre Haute Railway Company, and the Indianapolis and Vincennes Railroad Company.

Art. X. The party of the second part shall provide the means for and acquire any needful right of way and real estate; erect such necessary depot buildings, shops, engine-houses, side tracks, and appurtenances, and for other permanent construction, as may be reasonably required to accommodate the traffic of the railroad hereby leased, and shall be entitled to receive, for the actual advance so made, income bonds at par, bearing seven (7) per cent. interest, payable at such time as may be agreed upon, and such bonds, or any part of them, to be convertible into stock, at the option of the holder, at any time. The aggregate of such facilities required, and the amount to be expended, shall not exceed the sum of two million ($2,000,000) of dollars for the next three (3) years. All expenditures of like character thereafter, and the means required therefor, shall be matters of mutual agreement from time to time.

Art. XI. No issue of bonds, beyond the fifteen million ($15,000,000) of first-mortgage consolidated bonds, and the five million ($5,000,000) of second-mortgage consolidated bonds, and the two million ($2,000,000) of income bonds, hereinbefore provided for, shall be issued by the party of the first part, without the consent of the boards of directors of the respective parties to this lease—the one-half part of the said five million of second-mortgage bonds to be used in taking up certain income and other bonds now outstanding, not included in the fifteen million ($15,000,000) dollar loan aforesaid,
38 on the different lines composing the railroad of the party of the first part; and the other one-half part thereof to be used in paying off the debts due and to become due, of all kinds, of the said party of the first part, except the said bonded debt of twenty-two million ($22,000,000) dollars.

And it is further agreed, that no further issue of bonds shall be made, except as heretofore provided, or stock issued beyond the sum of thirteen million ($13,000,000) of dollars, except as the same may be increased by the conversion of bonds into capital stock of the company; in which case, the bonds so converted shall be canceled, making, in the aggregate, of bonds and stock, thirty-five million ($35,000,000) of dollars.

Art. XII. The said party of the second part shall pay for all supplies and equipments delivered on prior contracts, after the railway passes into the possession of the party of the second part; and the party of the first part shall pay for all supplies and equipments delivered before the party of the second part shall take possession, in-

cluding all pay-rolls, and other floating indebtedness, so that the railroad and other property shall be made free of all debt, except of first-mortgage bonds to the amount of fifteen million of dollars, second-mortgage bonds to the amount of five million of dollars, and of two million of dollars of income bonds, to be issued as herein provided, for construction purposes.

Art. XIII. Passenger trains shall be so run between Chicago and the East, via Pittsburgh, as to make connections, the speed of which shall be prorated upon the roads of all the parties hereto; and the party of the third part shall not run trains at higher rates of speed for any other connecting line, nor grant facilities of any kind that shall not be equaled by those given to the parties of the first and second parts; and in case the organization of the party of the second part, for the procurement of either passengers or freight in the eastern cities, or in the West, shall not be satisfactory to the party of the first part, then the said party of the first part may use its own organization, at its own expense, for the procurement of the above traffic, in the East or West, being governed in the securing of such traffic by the rates fixed or agreed to by the party of the second part; and no consolidation of earnings or running arrangements shall be made by the party of the second part with any other company, for competing business or traffic, without the consent of the party of the first part.

Art. XIV. In case of default in payment of interest on the bonds or sinking fund, as before provided, for sixty (60) days after the same shall become due and payable; or in carrying out
39 any of the provisions of this lease; or of default by the said second or third parties to do and perform any and all of the agreements to be done or performed by them, respectively, as aforesaid, for the space of four months, then the said party of the first part shall have the right to enter upon and take possession of all the property hereby leased, and all depots, shops, buildings, and other permanent property added thereto; and the said second and third parties, each for itself, agrees with said party of the first part, not to hinder or prevent its entering upon and taking such possession and using all said property, for its own benefit and use, by any suit or proceeding in law or in equity, or otherwise, and without prejudice as to any rights of damages which said party of the first part may have for such default, it being understood that this lease shall terminate on the party of the first part taking possession of the demised premises, as herein provided for.

Art. XV. The said party of the first part shall have the right to appoint a disinterested person as engineer, having no interest, directly or indirectly, in the property, bonds, or shares of the party of the first part, who shall examine, during the month of December, in each year, the said railroad and other property, equipment, etc., belonging to said party of the first part, and in the possession of the said party of the second part, and who shall report to the parties hereto, as to the condition of the same, in order that said parties of the second and third parts may comply with the conditions herein contained in that behalf.

Art. XVI. And the party of the third part, for and in consideration of the sum of one dollar, to it in hand paid by the parties of the first and second parts, the receipt whereof is hereby acknowledged, and of the benefits and advantages, accruing and to accrue to it, by reason of the covenants and agreements hereinbefore recited, by the said parties of the first and second parts to be done and performed, in the forming, maintaining, and operating of a continuous line of railway, in connection with the road or roads of the party of the third part, does hereby guarantee to the party of the first part, that the party of the second part will, in good faith, do, keep, and perform all and singular the matters and things which the said party of the second part have hereinbefore covenanted and agreed to do; and, upon any failure or default of the said party of the second part to keep and perform any and all of its said covenants and agreements, that then the said party of the third part will, upon notice to them, in writing, of the kind and nature of such failure or default, do, keep, and perform the same, for, and on behalf of the said party of the second part. In which event, the parties of the first and second parts agree, that the party of the third part shall, at its option, be entitled to all the profits and advantages which might or could arise or accrue therefrom to the party of the second part. And the said party of the third part further agrees, that the said lines of railway so formed, maintained and operated, shall, at all times, be placed upon a perfect equality with any other line or lines of railway that may connect at Pittsburgh, as to the rate and facilities for joint transportation, for all classes of traffic to and from all points west and east. It being distinctly understood and agreed, that the proceeds of all joint traffic on or over the lines of railway of all the parties hereto, shall be divided among them *pro rata*, on the basis of the shortest all-rail connections with the road of the party of the third part, to and from any competing points in the West, the object and intention being to place the joint line formed by the roads of the parties of the first and second parts, in respect to the road of the party of the third part and its Eastern connections, upon terms equally favorable to those granted to any other line, from time to time, as to facilities, and to give to the line of the road of the parties of the first and second parts, as its share of earnings on joint traffic moved over it, all that can accrue to any other line of road west of Pittsburgh, for transportation of like joint traffic to and from any competent point, on the *pro rata* per mile basis of division, by shortest all-rail lines forming the route of the party of the third part, to and from Baltimore and Philadelphia, and, via Philadelphia to New York and other points east.

And the party of the third part will, at all times, so conduct its organization, for securing traffic over its own and connecting roads, as to place the line of the parties of the first and second parts on a perfect equality, in all respects, with any and all other lines.

Art. XVII. It is further stipulated and agreed, that the party of the first part shall, and will, from time to time hereafter, during the continuance of this lease, make, execute, and deliver unto said

party of the second part, their successors or assigns, all and every such further and other leases, deeds, transfers, and assurances, as by said party of the second part, their successors or assigns, shall be reasonably desired or required, for fully effectuating the objects, intents, and purposes of this lease, and of the premises, and for fully confirming, leasing, and demising, as herein provided, the railroad and premises hereinbefore mentioned, and leased, or intended so to be, and for more fully confirming and securing unto said party of the second part, all the rights and privileges hereinbefore mentioned, and granted and secured, or intended so to be:

41 It being understood, however, that no assignment of this lease, nor of any rights under it, by the party of the second part, shall be made, without the consent of the party of the first part.

Art. XVIII. That the party of the second part shall keep an accurate account of all the business, receipts, and revenues arising from the demised property, and its books relating thereto shall be subject to the examination of the president of the company of the party of the first part, or of any other person duly authorized by them to examine the same; and the party of the second part shall furnish to the party of the first part monthly accounts of all the gross receipts, and an annual account of all the said gross receipts and revenues.

Art. XIX. That if any difference shall arise in relation to this lease, between the parties of the first and second parts, each shall select a referee of experience and skill in railway management, and the said referees shall select another of like skill and experience, and the three so chosen shall hear and decide such differences, and their decision, or that of a majority of them, shall be final and conclusive upon the said parties. And in case either of the parties fail to appoint a referee as aforesaid, for the space of thirty (30) days after the written notice to make such appointment, then, and in that event, the referee appointed by the party not in default shall appoint a referee for the defaulting party, and the said two referees shall then select a third referee as aforesaid.

In witness whereof, the Columbus, Chicago and Indiana Central Railway Company, the Pittsburgh, Cincinnati and St. Louis Railway Company, and the Pennsylvania Railroad Company, the said parties to these presents, have caused their respective corporate seals to be hereunto set and affixed, attested by the signatures of their respective president and secretary, the day and year first above written.

[SEAL.] B. E. SMITH,
Pres. C., C. & I. C. R. W. Co.

Attest: G. MOODIE, *Secretary.*

Sealed and delivered in the presence of us—
J. T. THOMAS.
W. F. DOGGETT.

[SEAL.] THOS. L. JEWETT,
Pres. P., C. & St. L. R. W. Co.

Attest: J. G. MORRIS, *Secretary.*

42 Sealed and delivered in the presence of us—
JOS. LESLEY.
R. D. BARCLAY.

[SEAL.] J. EDGAR THOMSON,
Pres. P. R. R. Co.

Attest: EDMUND SMITH, *Secretary.*

Sealed and delivered in the presence of us—
JOS. LESLEY.
R. D. BARCLAY.

STATE OF PENNSYLVANIA, }
City of Philadelphia, } *ss:*

Be it remembered, that on this twenty-second day of January, A. D. 1869, before me, the subscriber, a notary public for the Commonwealth of Pennsylvania, residing in the city of Philadelphia, personally appeared J. Edgar Thomson, Esq., president of the foregoing-named corporation—the Pennsylvania Railroad Company—who, being duly sworn, deposes and says that he was personally present at the execution of the foregoing indenture of lease and contract, and did affix the common or corporate seal of the said corporation, the Pennsylvania Railroad Company, thereto, and that the seal so affixed is the common or corporate seal of the said company; and that the foregoing indenture of lease and contract was duly signed, sealed, and delivered by, and as and for, the act and deed of the said The Pennsylvania Railroad Company, for the uses and purposes therein mentioned; and that the signature of this deponent to the said indenture of lease and contract, as president of the said corporation, is of this deponent's own proper handwriting.

J. EDGAR THOMSON.

Sworn and subscribed before me, the day and year aforesaid.
Witness my hand and notarial seal.

[SEAL.] R. D. BARCLAY,
Notary Public.

43 STATE OF PENNSYLVANIA, }
City of Philadelphia, } *ss:*

Be it remembered, that on this twenty-second day of January, A. D. 1869, before me, the subscriber, a notary public for the Commonwealth of Pennsylvania, residing in the city of Philadelphia, personally appeared Edmund Smith, Esq., secretary of the foregoing-named corporation—the Pennsylvania Railroad Company—who, being duly sworn, deposes and says that he was personally present at the execution of the foregoing indenture of lease and contract, and saw J. Edgar Thomson, Esq., president of the said corporation, sign, seal, and deliver the same as his act and deed, and in pursuance of a resolution of the board of directors of said company duly passed, by order and authority of said company, as the act and deed thereof; and did also see him affix the seal of the said

company to the said indenture of lease and contract, by virtue of said authority vested in him, as the act and deed of the said company; and that the name of this deponent subscribed to the said indenture as secretary of the said corporation, in attestation of the due execution and delivery of the said indenture, is of this deponent's own proper handwriting.

EDMUND SMITH.

Sworn and subscribed before me, the day and year aforesaid. Witness my hand and notarial seal.

[SEAL.] R. D. BARCLAY,
Notary Public.

44 STATE OF OHIO, } ss:
City of Columbus, }

Be it remembered, that on this twenty-ninth day of January, A. D. 1869, before me, the subscriber, a notary public for the county of Franklin, State of Ohio, residing in Columbus, personally appeared Thomas L. Jewett, president of the Pittsburgh, Cincinnati and St. Louis Railway Company, the foregoing-named corporation, who, being duly sworn, deposes and says that he was personally present at the execution of the foregoing indenture of lease and contract, and did affix the common or corporate seal of the said corporation, the Pittsburgh, Cincinnati and St. Louis Railway Company, thereto, and that the seal so affixed is the common or corporate seal of the said company; and that the foregoing indenture of lease and contract was duly signed, sealed, and delivered by, and as and for, the act and deed of the said The Pittsburgh, Cincinnati and St. Louis Railway Company, for the uses and purposes therein mentioned; and that the signature of this deponent to the said indenture of lease and contract, as president of the said corporation, is of this deponent's own proper handwriting.

THOS. L. JEWETT,
President P., C. & St. L. R'y Co.

Sworn and subscribed before me, the day and year aforesaid. Witness my hand and notarial seal.

[SEAL.] W. F. DOGGETT,
Notary Public.

45 STATE OF OHIO, } ss:
City of Columbus, }

Be it remembered, that on this twenty-ninth day of January, A. D. 1869, before me, the subscriber, a notary public for the county of Franklin, State of Ohio, residing in Columbus, personally appeared B. E. Smith, president of the Columbus, Chicago and Indiana Central Railway Company, the foregoing-named corporation, who, being duly sworn, deposes and says that he was personally present at the execution of the foregoing indenture of lease and contract, and did affix the common or corporate seal of the said corporation, the Columbus, Chicago and Indiana Central Railway

Company, thereto, and that the seal so affixed is the common or corporate seal of the said company; and that the foregoing indenture of lease and contract was duly signed, sealed, and delivered by and as and for, the act and deed of the said The Columbus, Chicago and Indiana Central Railway Company, for the uses and purposes therein mentioned; and that the signature of this deponent to the said indenture of lease and contract, as president of the said corporation, is of this deponent's own proper handwriting.

B. E. SMITH, *President.*

Sworn and subscribed before me, the day and year aforesaid. Witness my hand and notarial seal.

[SEAL.] W. F. DOGGETT,
Notary Public.

46 EXHIBIT D.

Amended Lease.

Agreement made this first day of February, in the year of our Lord one thousand eight hundred and seventy (1870), by and between the Columbus, Chicago and Indiana Central Railway Company, of the first part; the Pittsburgh, Cincinnati and St. Louis Railway Company, of the second part, and the Pennsylvania Railroad Company of the third part.

Witnesseth, That for and in consideration of the covenants hereinafter contained, and of the benefits expected to result therefrom, the parties have agreed with each other.

Article I. The party of the first part agrees and undertakes to arrange, provide for, and so adjust and classify all their indebtedness now existing, that $15,821,000 thereof shall be represented by bonds bearing seven (7) per cent. interest, secured by mortgage upon the estate and property of the said party of the first part—the $821,000 being Columbus and Indianapolis Central Railway Company second-mortgage bonds; and that all other indebtedness of said party, and all payments and advances heretofore made on or for interest, construction, operating, and maintaining said road, accounts, and expenditures made by the second and third parties, or either, in excess of the receipts heretofore derived from the business and transportation on and over said road, shall be represented by bonds bearing seven (7) per cent. interest, entitling the holder to vote, secured by a mortgage upon all the estate and property of said company, which bonds shall be payable after twenty years, at the pleasure of the said first party, and shall be convertible into preferred capital stock, bearing seven (7) per cent. interest, at par, at any time within fifteen years, at the option of the holders of the same, which issue of bonds shall not exceed ten million of dollars, to be received by the said second and third parties at par, in payment of their claims and advances, so far as they are entitled and may hereafter become entitled to the same.

47 Art. II. That hereafter the party of the second part covenants and agrees to pay and apply the thirty per cent.—being

the balance of the gross earnings of the railroad of the party of the first part—as follows:

First. For the payment of the coupons, as they shall from time to time mature, upon the said bonds representing and amounting to the aforesaid sum of fifteen million eight hundred and twenty-one thousand dollars ($15,821,000). But if the same shall not be adequate to such payment in full in any one year, then the said party of the second part will pay any such deficiency out of its own proper moneys, without charge, reclamation, or subrogation therefor.

Second. Out of any surplus of said thirty per cent. remaining after payment of said interest, to pay the same *pro rata*, as interest or dividends, to and among the holders of the convertible bonds provided for in the first article of this agreement, based on the entire amount of the income bonds convertible into preferred stock, as provided in the first article of this agreement, actually issued; and the bonds which the holders have the option to convert into the said income bonds, and the holders of any stock into which any of said bonds may have been converted by the holder, in the exercise of the option so to do, provided for in the bonds, and also of any bonds hereafter to be issued under the provisions of a subsequent article of this agreement, to represent new constructions and additional equipment for the use of the railroad of the party of the first part; and,

Third. To pay to a sinking fund, to be established for the redemption of said mortgage bonds, the one-half of one per cent. provided for in the mortgages to secure the payment of said $15,821,000 of bonds, for the use and benefit of the first party; and after such payments, any surplus of said thirty per cent. remaining, to be divided *pro rata* as a dividend upon the common stock of said party of the first part.

Art. III. All sums expended by the party of the second part after the date of this agreement, under the provisions of the tenth article of the agreement of January 22, 1869, and the interest thereon, at seven per cent., upon the cost of any new equipment provided by the party of the second part, necessary for the successful operating of the road of the party of the first part, shall be promptly liquidated and paid to the second party in said convertible bonds, at par.

48 Art. IV. Any defects of power or authority (if such there be) to enter into and effectuate the agreement of January 22, 1869, and of this present agreement, existing between the parties hereto, shall be removed and the requisite authority therefor be obtained at the earliest practicable time; and thereupon either party may require of the other, the due execution of such instruments as will perfect, confirm, and render operative and binding said agreement.

Art. V. Whenever this agreement shall conflict with the provisions of the agreement of January 22, 1869, by and between the parties hereto, the said agreement of January 22, 1869, shall in those particulars and to that extent, be deemed and taken to be

changed and modified; and the party of the third part unites in the execution of this agreement, in testimony of its assent to such modifications.

It is understood that annual gross earnings mentioned in the sixth article of the original lease, shall be held to mean the annual gross revenues of the road of the party of the first part, after the deduction therefrom of all *pro rata* bridge tolls, drawbacks allowed on freight traffic, terminal expenses allowed to other railroad corporations on through business between the East and West, and whatever amount is paid to the Chicago and Northwestern Railroad Company per passenger and per hundred on freight, for the use of their road, until the road of the party of the first part is completed to its proper terminus in Chicago.

It is understood and agreed between the parties hereto, that the 13th article of the original lease shall be amended and modified so as to read as follows, viz:

Passenger trains shall be so run as to develop and increase the local and through business upon said road of the party of the first part, and where connections are made between Chicago and the East via Pittsburgh, the speed thereof shall be prorated upon the roads of all parties hereto, and the party of the third part shall not run trains at higher rates of speed for any other connecting line, nor grant facilities of any kind that shall not be equaled by those given to the parties of the first and second parts; and in case the organization of the party of the second part, for the procurement of either passengers or freight, in the Eastern cities or in the West, shall not be satisfactory to the party of the first part, then the said party of the first part may use its own organization, at its own expense, for the procurement of above traffic in the East or
49 West, being governed in the securing of such traffic by the rates fixed or agreed to by the party of the second part, and no consolidation of earnings or running arrangements shall be made by the party of the second part with any other company, for competing business or traffic, without the consent of the party of the first part.

In witness whereof, the Columbus, Chicago and Indiana Central Railway Company, the Pittsburgh, Cincinnati and St. Louis Railway Company, and the Pennsylvania Railroad Company have hereunto, by their presidents, signed their names and affixed their corporate seals respectively, the day and year first above mentioned.

[SEAL.] B. E. SMITH,
Pres. C., C. & I. C. R'y Co.

Attest: G. MOODIE, *Secretary.*

Sealed and delivered in the presence of—
W. F. STAUNTON.
J. M. McKEE.

[SEAL.] THOS. L. JEWETT,
Pres. P., C. & St. L. R'y Co.

Attest: J. G. MORRIS, *Secretary.*

Sealed and delivered in the presence of—
HERMAN J. LAMBAERT.
W. J. HOWARD.

[SEAL.] J. EDGAR THOMSON,
Pres. Penn. R. R. Co.

Attest: JOS. LESLEY, *Secretary.*

Sealed and delivered in the presence of—
HERMAN J. LAMBAERT.
W. J. HOWARD.

50 STATE OF OHIO, } ss:
City of Columbus, Franklin County, }

Be it remembered, that on this 10th day of December, A. D. 1870, before me, the subscriber, a notary public for Franklin county, in the State of Ohio, personally appeared B. E. Smith, president of the Columbus, Chicago and Indiana Central Railway Company, the foregoing-named corporation, who, being duly sworn, deposes and says that he was personally present at the execution of the foregoing agreement, and did affix the common or corporate seal of the said corporation, the Columbus, Chicago and Indiana Central Railway Company, thereto, and that the seal so affixed is the common or corporate seal of the said company; and that the foregoing agreement was duly signed, sealed, and delivered by, and as and for, the act and deed of the said The Columbus, Chicago and Indiana Central Railway Company, for the uses and purposes therein mentioned; and that the signature of this deponent to said agreement, as president of the said corporation, is of this deponent's own proper handwriting. B. E. SMITH.

Sworn to and subscribed before me, the day and year aforesaid. Witness my hand and notarial seal.

[SEAL.] AUGUSTUS BRADLEY,
Notary Public.

51 STATE OF OHIO, } ss:
City of Columbus, Franklin County, }

Be it remembered, that on this 10th day of December, A. D. 1870, before me, the subscriber, a notary public for Franklin county, in the State of Ohio, personally appeared Thomas L. Jewett, president of the Pittsburgh, Cincinnati and St. Louis Railway Company, the foregoing-named corporation, who, being duly sworn, deposes and says that he was personally present at the execution of the foregoing agreement, and did affix the common or corporate seal of the said corporation, the Pittsburgh, Cincinnati and St. Louis Railway Company, thereto, and that the seal so affixed is the common or corporate seal of the said company; and that the foregoing agreement was duly signed and sealed and delivered by, and as and for, the act and deed of the said The Pittsburgh, Cincinnati and St. Louis Railway Company, for the uses and purposes therein mentioned; and that the signature of this deponent to said agreement, as president of the said corporation, is of this deponent's own proper handwriting. THOMAS L. JEWETT, *President.*

Sworn to and subscribed before me, the day and year aforesaid. Witness my hand and notarial seal.

[SEAL.] AUGUSTUS BRADLEY, *Notary Public.*

52 STATE OF PENNSYLVANIA, } ss:
City of Philadelphia, }

Be it remembered, that on this 6th day of December, A. D. 1870, before me, the subscriber, a notary public of the Commonwealth of Pennsylvania, residing in the said city, personally appeared Joseph Lesley, secretary of the foregoing-named corporation, the Pennsylvania Railroad Company, who, being duly affirmed, deposes and says that he was personally present at the execution of the foregoing agreement, and saw J. Edgar Thomson, president of the said corporation, sign, seal, and deliver the same as his act and deed, and did also see him affix the seal of the said company to the said agreement, by virtue of said authority vested in him, as the act and deed of the said company; and that the name of this deponent subscribed to the said agreement, as secretary of said corporation, in attestation of the due execution of and delivery of the said agreement, is of this deponent's own proper handwriting.

JOSEPH LESLEY.

Affirmed and subscribed before me, the day and year aforesaid. Witness my hand and notarial seal.

[SEAL.] HENRY C. SPACKMAN, *Notary Public.*

53 EXHIBIT C TO BILL.

Appendix.

COLUMBUS, OHIO, *February* 16, 1869.

B. E. Smith, Esq., pres't C., C. & I. C. R'y Co.

SIR: Referring to a proposed contract between the Toledo, Peoria and Warsaw Railway Company, party of the first part; the Des Moines Valley Railroad Company, party of the second part; the Columbus, Chicago and Indiana Central Railway Company, party of the third part; the Toledo, Wabash and Western Railway Company, party of the fourth part, and the Keokuk and Hamilton Bridge Company, party of the fifth part, for, among other things, the construction and use of a substantial wrought-iron bridge across the Mississippi river at Keokuk, Iowa, which contract was under negotiation, but unexecuted, by the Columbus, Chicago and Indiana Central Railway Company at the date of the final execution of the contract and lease of your company's railroad and property to and with the Pittsburgh, Cincinnati and St. Louis Railway Company, and the Pennsylvania Railroad Company, to wit, on the 29th of January, 1869, and was not included among the contracts of your railway company assumed by the lessee under their lease from your said company.

On behalf of the said lessee, the Pittsburgh, Cincinnati and St. Louis Railway Company, and the Pennsylvania Railroad Company, party to said lease and contract, the undersigned request that you will officially, as the president of the Columbus, Chicago and Indiana Central Railway Company, execute said bridge contract, it being

understood that the said lessee and Pennsylvania Railroad Company shall assume all the liabilities and obligations, and be entitled to all the benefits of said bridge contract, the same as if it
54 had been specifically named and made a part of the 9th article of the said lease and contract of the Columbus, Chicago and Indiana Central Railway Company to and with the Pittsburgh, Cincinnati and St. Louis Railway Company and the Pennsylvania Railroad Company, bearing date the 22d of January, 1869.

Respectfully yours,

(Signed) T. L. JEWETT,
President Pittsburgh, Cincinnati & St. Louis Railway Company.

Approved.

(Signed) J. EDGAR THOMSON,
President Pennsylvania Railroad Co.

55 EXHIBIT E TO BILL.

First Amendment to Foregoing Agreement.

The following modifications in the original contract between the parties hereto, dated January 19, 1869, for the construction and use of the bridge at Keokuk are hereby agreed to—

First. Instead of the schedule of tolls named therein the following shall be charged:

Classified merchandise, five cents per hundred pounds.

Lumber, flour, grain, live stock, and salt, five dollars per car-load.

Railroad iron, four dollars per car-load.

Coal, stone and minerals, three dollars and fifty cents per car-load.

Empty freight cars, as freight, three dollars per car.

Passengers, mail and baggage, as freight, six dollars per car.

Locomotives, as freight, twenty dollars.

Second. Instead of the railway companies to the said contract making good any sum necessary to net the bridge company from railway-freight traffic the sum of eighty thousand dollars per annum, *pro rata*, in proportion to the tonnage passed over the bridge by each railroad company, it is agreed that the deficiency, if any, necessary to be paid, in order to produce to the bridge company at the rate of eighty thousand dollars per annum from railway-freight traffic, shall be made good by each of the four railway companies hereto, to wit, the Toledo, Wabash and Western, the Toledo, Peoria and Warsaw, the Des Moines Valley, and the Columbus, Chicago and Indiana Central Railway Companies, by each for itself, and not for the others, paying one-fourth part of the deficiency, if any.

56 Third. And it is agreed that in addition to the payment of tolls monthly upon traffic, as provided in the original contract, that upon the first days of March and September in each year settlements for the previous six months shall be made, and the amounts required to net the bridge company from railroad-freight traffic, the sum of forty thousand dollars for said previous six months, shall be promptly paid over to the treasurer of the bridge company

by the railroad companies severally in the proportions above named, this contract to be binding when executed by each of the railway companies parties hereto, and ratified by the bridge company.

Signed this sixth day of June, 1871.

Attest: TOLEDO, WABASH AND WESTERN RAILWAY COMPANY,

[SEAL.] By A. BOODY, *President.*

W. B. CORNEAU, *Secretary.*

DES MOINES VALLEY RAILROAD CO.,

[SEAL.] By D. W. KILBOURNE, *President.*

TOLEDO, PEORIA AND WARSAW RAILWAY CO.,

[SEAL.] ZENO SECOR, *President.*

THOS. H. WILLIAMS, *Ass't Sec'y.*

COLUMBUS, CHICAGO AND INDIANA CENTRAL RAILWAY COMPAMY,

[SEAL.] By B. E. SMITH, *President.*

KEOKUK AND HAMILTON BRIDGE CO.,

[SEAL.] By ANDREW CARNEGIE, *President.*

(See letters of Scott and Thomson to Smith, pages 8 and 9 of complainant's bill or pages 59, 60 and 65 of this record.)

57 EXHIBIT F to BILL.

Second Amendment.

And it is further stipulated and agreed by, to and with the parties hereto, in the manner as hereinafter set forth, that these presents, when executed by the said parties, be and become a part of the modified contract bearing date the sixth day of June, one thousand eight hundred and seventy one, and also, and in addition thereof, it become a part of the original contract bearing date the nineteenth day of January, one thousand eight hundred and sixty-nine, the foregoing and following being subjoined thereto by the parties hereof as between themselves.

And it is further stipulated and agreed that the net revenues from all sources of the said bridge company since the day of its said bridge being opened for traffic, after payment for repairs, maintenances, and all the expenses connected therewith, including reasonable cost for operating the bridge and approaches thereto, shall in the first instance thereafter be applied by said bridge company to the payment of the interest on one million of mortgage bonds issued by said bridge company, and thereafter, provided any advances made by the railroad companies hereto toward paying the bonded interest shall have been first repaid, as hereinafter recited, said net revenues shall be applied to the payment of dividends upon the capital stock of said bridge company, to wit: One million of capital stock, said dividends not to exceed in any one year eight per centum, and when the revenues as aforesaid are sufficient to

make the said payments, to wit, the interest and dividends as aforesaid, the tolls upon railway passengers and freights shall be from time to time reduced, so that the net revenues from all sources shall never exceed the sum necessary to produce the interest and dividends as aforesaid; and any net revenues in excess of said sum shall belong to the railroad companies parties hereto, to be divided among them in proportion to the sums they may have respectively paid toward the fund necessary to pay the bonded interest.

But it is understood and agreed that the highway revenues being now pledged for the sum of twenty-five thousand dollars, borrowed on temporary loan since the opening of the bridge for the purpose of purchasing the franchises of the ferry company and their highway approach between Hamilton and the bridge, *that* this obligation is to be adhered to, and the debt paid from the first net revenues from highway travel before these revenues are merged in the general receipts as above provided.

58 And it is further agreed that upon the demand of the railroad companies hereto a lease of the bridge and approaches shall be executed to said parties upon the basis of their paying the said bonded interest and a dividend of seven per cent. per annum, free of all taxes, upon the present capital stock of the bridge company, and in addition thereto said parties paying the cost of operating and maintaining in continuity the properties of said bridge and approaches in proper working order.

And it is further agreed by the parties hereto that any payments made by the railroad companies hereto, under the provisions of the previous contracts before mentioned, toward making up the sum necessary to meet the bonded interest of the bridge company, the obligation to do which is herewith reaffirmed, said payments are to be considered as advances, to be repaid out of the first surplus revenues of the bridge company after payment of the bonded interest and expenses as aforesaid, and before any dividends are made upon the capital stock.

In witness whereof the parties hereto have caused each of their common seals and the signatures of their proper officers to be affixed hereunto in execution hereof.

New York, November 25, 1871.

Attest: TOLEDO, WABASH AND WESTERN RAILWAY CO.,

[SEAL.] By A. BOODY, *President*,
W. B. CORNEAU, *Secretary*.

TOLEDO, PEORIA AND WARSAW RAILWAY CO.,

[SEAL.] By JAMES F. SECOR, *Pres. pro Tem.*,
THOS. H. WILLIAMS, *Ass't Sec'y*.

DES MOINES VALLEY RAILROAD CO.,

[SEAL.] By N. A. COWDRY, *President*.

COLUMBUS, CHICAGO AND INDIANA CENTRAL RAILWAY CO.,

[SEAL.] By B. E. SMITH, *President*.

KEOKUK AND HAMILTON BRIDGE CO.,

[SEAL.] By ANDREW CARNEGIE, *President*,

59 EXHIBIT G TO BILL.

"B. E. Smith, Esq., pres't C., C. & I. C. R'y Co.

"SIR: Referring to the letter of the president of this company, dated February 16, 1869, requesting you, as president of the Columbus, Chicago and Indiana Central Railway Company, to enter into a certain contract for the construction of a bridge across the Mississippi river at Keokuk, Iowa, which has since been completed, we beg now to request, on behalf of the Pittsburgh, Cincinnati and St. Louis railway, the lessee of your line, and the Pennsylvania Railroad Company, party to the said lease and contract, that you will officially, as president of the Columbus, Chicago & Indiana Central Railway Company, execute and agree to certain modifications of said contract concurred in by all the others, parties to said contract, and dated June 6, 1871, it being understood that the said lessee and the Pennsylvania Railroad Comyany shall assume all the liabilities and obligations, and he entitled to all the benefits of said modifications, the same as if they had been specifically named and made a part of the ninth article of the said lease and contract of the Columbus, Chicago & Indiana Central Railway Company to and with the Pittsburgh, Cincinnati & St. Louis Railway Company and the Pennsylvania Railroad Company, bearing date the 22d of January, 1869.

"Respectfully yours,

"(Signed) THOMAS A. SCOTT,
"*Pres't P., C. & St. L. R'y Co.*

"Approved.

"(Signed) J. EDGAR THOMSON,
"*Pres't P. R. R. Co.*"

60 "B. E. Smith, Esq., pres't C., C. & I. C. R'y Co.

"DEAR SIR: Certain further modification having this day (November 25, 1871) been agreed to by the Keokuk and Hamilton Bridge Company, in the contract between that company and the railroad companies, parties to the original and amended contracts for the use of that bridge, we hereby request you to accept the same in accordance with the terms of the foregoing letter.

"Respectfully yours,

"(Signed) THOMAS A. SCOTT,
"*Pres't P., C. & St. L. R'y Co.*

"Approved.

"(Signed) J. EDGAR THOMSON,
"*Pres. P. R. R. Co.*

"Philadelphia, Nov. 29, 1871."

61 EXHIBIT K TO BILL.

NEW YORK, *Aug.* 19, 1889.

George B. Roberts, Esq., pres. of the Pa. R. R. Co.

SIR: Under the contract of the Columbus, Chicago & Indiana Central Railway Company and others, with the Keokuk & Hamilton Bridge Company, dated January 19, 1869, and the subsequent amendments thereof, which contract and amendments were entered into by the Columbus, Chicago & Indiana Central Railway Company at the request of the Pittsburgh, Cincinnati & St. Louis Railway Company and the Pennsylvania Railroad Company, made through the presidents of said last-mentioned companies, with the understanding that said last-mentioned companies should assume all the liabilities and obligations, and be entitled to all the benefits of said bridge contract and amendments thereof, the same as if they had been specifically named and made a part of the 9th article of the lease of the Columbus, Chicago & Indiana Central Railway Company, by the Pittsburgh, Cincinnati & St. Louis Railway Company, to which the Pennsylvania Railroad Company was a party, there is now due from said Pittsburgh, Cincinnati & St. Louis Railway Company, on account of deficiencies in the earnings of said bridge company, the following sums, to wit:

Sept. 1, 1883	$8,425 85
March 1, 1884	1,213 11
Sept. 1, 1884	491 22
March 1, 1885	1,216 36
Sept. 1, 1885	3,102 90
March 1, 1886	6,967 64
Sept. 1, 1886	6,825 92
March 1, 1887	6,515 87
Sept. 1, 1887	7,876 19
March 1, 1888	5,932 69
Sept. 1, 1888	8,383 88
March 1, 1889	4,671 15

Besides interest upon said several sums from the time they respectively fell due.

62 The Pittsburgh, Cincinnati & St. Louis Railway Company having failed to pay any of the said several sums, or any part thereof, notice is hereby given to the Pennsylvania Railroad Company of such default on the part of the Pittsburgh, Cincinnati & St. Louis Railway Company, and the said bridge company hereby demands of the Pennsylvania Railroad Company that it pay said several sums of money, with interest, to the said Keokuk & Hamilton Bridge Company.

Yours respectfully,

(Signed) THEODORE GILMAN,
Treasurer of the Keokuk & Hamilton Bridge Co.

(Endorsed:) Filed Sept. 12, 1889. Wm. H. Bradley, clerk.

1

Circuit Court of the United States

FOR THE

NORTHERN DISTRICT OF ILLINOIS,

NORTHERN DIVISION.

2

THE KEOKUK AND HAMILTON BRIDGE COMPANY, Complainant, AGAINST THE PITTSBURGH, CINCINNATI AND ST. LOUIS RAILWAY COMPANY and THE PENNSYLVANIA RAILROAD COMPANY, Defendants.	In Chancery.

3

The amended several answer of the Pittsburgh, Cincinnati and St. Louis Railway Company and the Pennsylvania Railroad Company, to the bill of complaint filed against them by the Keokuk and Hamilton Bridge Company, in the above-entitled case.

4

Now come the aforesaid defendants, The Pittsburgh, Cincinnati and St. Louis Railway Company and The Pennsylvania Railroad Company, and severally, each for itself, and not for its co-defendant, reserving all matter of just exception which may exist to each and every allegation of the said bill of complaint, and protesting that they are not, nor is either of them in equity required to make anwer thereto, by way of amended answer, say:

Each of the said defendants admits the averments of

5 the bill of complaint as to the organization and powers of the Keokuk and Hamilton Bridge Company, and especially admits that said Bridge Company had and has the right to connect its bridge by railroad or otherwise with any road or roads, railroad or railroads terminating at such bridge or bridges within the State of Illinois or the State of Iowa, but denies that said complainant company ever had or has the right to connect its bridge by a railroad or otherwise with any road or roads, railroad or railroads, or to lease its bridge, or
6 to lease or convey any right to use the same to any railroad company owning any railroad which does not terminate at such bridge either in the State of Illinois or in the State of Iowa, or to enter into the contracts described in the bill of complaint with either of these defendants or with the said Columbus Company. That the defendant The Pennsylvania Railroad Company was, at the time stated in said complaint, a corporation organized under the laws of the State of Pennsylvania, and a citizen of said State, and then owned and oper-
7 ated, and still owns and operates, a railroad, extending from Philadelphia to Pittsburgh, in said State, where it unites and connects with the railroad of its co-defendant, which is a corporation organized under the laws of Pennsylvania, West Virginia and Ohio. That the railroad of its co-defendant the said Pittsburgh, Cincinnati and St. Louis Railway Company then extended and now extends from the City of Pittsburgh, in Pennsylvania, to, but not further west than the City of Columbus, in the State of Ohio, and
8 said co-defendant has not and never has had corporate powers under the laws of any State west of Ohio; that at the times described in said bill of complaint the railroad of said Pittsburgh, Cincinnati and St. Louis Railway Company, hereinafter, for the sake of greater brevity, described as the Pittsburgh Company, united and had a physical connection at Columbus, Ohio, with the railroad of the Columbus, Chicago and Indiana Central Railway Company, hereinafter, and for greater brevity, called the Columbus Company.

These defendants, each for itself, and not for its co-

defendant, admit the averments of the bill with regard 9
to the formation of the said Columbus Company, except that they deny that said Columbus Company then had, has now or ever had any connection with or control of the Toledo, Peoria and Warsaw Railroad, or of the company owning the same, except a physical connection of the rails of the Columbus Company at the State line between Indiana and Illinois, with the rails of the said Toledo, Peoria and Warsaw Railroad, and they further aver that the only connection between the railway of said Columbus Company and that of the Toledo, 10
Wabash and Western Railroad. Company was the physical connection of the rails of the two companies at Logansport, Indiana.

These defendants, further answering, each for itself, and not for its co-defendant, admit that on the 16th day of February, 1869, an agreement dated January 19, 1869, was entered into, to the purport and effect described in said bill of complaint, between the said Toledo, Peoria and Warsaw Railroad Company, party of the first part, the Des Moines Valley Railroad Com- 11
pany, party of the second part, The Toledo, Wabash and Western Railroad Company, party of the fourth part, and the complainant party of the fifth part, and that a true copy of said agreement is attached to said bill of complaint marked "Exhibit A."

But these defendants deny that said agreement was then, or ever after, executed by the said Columbus Company as a party of the third part, as averred in said bill.

This defendant admits that Benjamin E. Smith, pres- 12
ident of the Columbus Company, did attach his signature to said agreement, as well as the corporate seal of said company, of which he was then possessed, but avers that the same was done without the knowledge, consent or subsequent approval of the Board of Directors or the stockholders of said company, and without any other legal authority whatsoever.

These defendants, each for itself, and not for its co-defendant, deny that on the 29th of January, 1869, or at any other time before or since, they, or either of

13 them, became possessed of the railway and property of the said Columbus Company by virtue of a lease and contract made by the said Columbus Company to and with these defendants, or either of them. But, on the contrary, they aver that while it is true that at or about the said date the said Pittsburgh Company did become possessed of the said railway and property of the said Columbus Company, the said Pennsylvania Company never had such possession, and that the said possession of the Pittsburgh Company was not by virtue of said
14 lease and contract.

They admit that said instrument described in said bill of complaint as a lease and contract was executed by the said Columbus Company, the said Pittsburgh Company and the said Pennsylvania Company, by authority conferred by the directors and stockholders of the said Columbus and Pittsburgh Companies, respectively, and by the directors of the said Pennsylvania Company, and they admit that a true copy thereof is filed with said bill, marked "Exhibit B."

15 They aver that the execution of said instrument was not authorized by the laws of either the States of Illinois, Indiana or Ohio, under which said Columbus Company was organized, nor by the laws of the State of Ohio, under which said Pittsburgh Company was organized, but aver that it was expressly prohibited by the laws of the State of Ohio.

And these defendants, each for itself, further answering, aver that the said instrument did not purport to be a lease and contract, but an indenture of lease.
16 That it purported to contain a demise by the said Columbus Company as lessor, to the said Pittsburgh Company as lessee, of all and singular the said railroad of the said Columbus Company, being 586½ miles in length, of which 424½ miles were in the State of Indiana, about 134½ miles in the State of Ohio, and about 27½ miles in the State of Illinois, with all the franchises, equipment and property of said leasing company more particularly described in said indenture, for the term of ninety-nine years from February 1, 1869, renewable for ever, but subject to the earlier determination of said lease as therein provided for.

And these defendants, each for itself, and not for its co-defendant, aver that the *ninth* and *fourteenth* articles of the said indenture of lease were in the words and figures following, that is to say: 17

"ARTICLE IX. The party of the first part hereby assigns and transfers to the party of the second part all its right and interest in its contract of the eleventh of March, A. D. eighteen hundred and sixty-eight, with the Terre Haute and Indianapolis Railroad Company *et al.* and its contracts with the Little Miami and Columbus and Xenia Railroad Company, the Indianapolis, Cincinnati and Lafayette Railroad Company, the Indianapolis and Vincennes Railroad Company, stock yard track contract at Chicago, and all other of its contracts relating to other roads for transportation, copies of which are hereto annexed; and the said party of the second part assumes and agrees, at its own risk and expense, to carry out each and all said contracts according to their respective tenors and legal liabilities, receiving and enjoying all benefits to be derived therefrom, and also to indemnify and save harmless the said party of the first part on account of its endorsements on the bonds of the St. Louis, Vandalia and Terre Haute Railway Company and the Indianapolis and Vincennes Railroad Company." 18 19

"Article XIV. In case of default in payment of interest on the bonds or sinking fund, as before provided, for sixty (60) days after the same shall become due and payable, or in carrying out any of the provisions of this lease, or of default by the said second or third parties to do and perform any and all of the agreements to be done or performed by them respectively, as aforesaid, for the space of four months, then the said party of the first part shall have the right to enter upon and take possession of all property hereby leased, and all depots, shops, buildings and other permanent property added thereto; and the said second and third parties, each for itself, agrees with said party of the first part not to hinder or prevent its entering upon and taking such possession and using all said property for its own benefit and use by any suit or proceeding in law or in equity, or otherwise, and without prejudice as to any rights of damages which said party of the first part may have for such default, it being understood that this lease shall terminate on the party of the first part taking possession of the demised premises, as herein provided for." 20

21 And these defendants further answering, each for itself, and not for its co-defendant, deny that the said agreement, whereof a copy marked Exhibit "A," is attached to the said bill of complaint, was executed by the said Columbus Company at the request of these answering defendants, or either of them. On the contrary, they aver that the said alleged request was not authorized by or the existence thereof known to the directors and stockholders of either of the defendants, but was the unauthorized act of Thomas L. Jewett,
22 then president of the said Pittsburgh Company, and J. Edgar Thomson, then president of the said Pennsylvania Railroad Company, addressed in writing to Benjamin E. Smith, then president of the said Columbus Company, and was not known to, or ever in any manner approved by the directors or stockholders of any of the said companies.

These defendants, further answering, each for itself and not for its co-defendant, admit that a true copy of said written request is annexed to said bill of com-
23 plaint marked Exhibit "C."

They aver that the said request signed by the said Jewett and Thomson, and addressed to the said Smith, contained the request that said Smith should execute said Bridge contract in these words:

"On behalf of the said lessee, the Pittsburgh, Cincinnati and St. Louis Railway Company and The Pennsylvania Railroad Company, party to said lease and contract, the undersigned request that you will officially, as the president of the Columbus, Chicago and Indiana
24 Central Railway Company, execute said bridge contract, it being understood that the said lessee and Pennsylvania Railroad Company shall assume all the liabilities and obligations and be entitled to all the benefits of said bridge contract the same as if it had been specifically named and made a part of the ninth article of the said lease and contract of the Columbus, Chicago and Indiana Central Railroad Company to and with the Pittsburgh, Cincinnati and St. Louis Railway Company and The Pennsylvania Railroad Company, bearing date the 22d day of January, 1869."

And these defendants further answering, each for itself, say that the said *ninth* article of the said lease

and contract, so as aforesaid named in said request last 25
hereinbefore quoted, is the same *ninth* article of the indenture of lease of said railway property and franchises hereinbefore in this answer quoted and set forth at large, and that if the said request were in law valid and binding upon these co-defendants, or either of them, and had been followed by the lawful execution of said bridge contract by said Columbus Company, it would and could have had in law and in equity no other or greater effect than to bind said Pittsburgh Company as lessee and The Pennsylvania Railroad Company as 26
guarantor of said lease, and not otherwise, to said Columbus Company, to the extent of the terms of said bridge contract, during the lawful continuance of said lease and of possession held under the same and no longer.

And these defendants, each answering for itself, and not for its co-defendant, further admit that by the *sixteenth* article of said indenture or lease (called in said bill of complaint "lease and contract"), the said Pennsylvania Railroad Company, for a consideration 27
therein expressed, guaranteed to said Columbus Company that the said Pittsburgh Company would in good faith do and perform all and singular the matters and things which by said indenture it had covenanted and agreed to do, and that upon any failure or default of the said Pittsburgh Company to keep and perform any and all of its said agreements and covenants, it, the said Pennsylvania Company, would, upon notice to it in writing of the kind and nature of such failure and default, keep and perform the same for and on behalf of 28
the said Pennsylvania Company.

But these defendants, each answering for itself and not for its co-defendant, further aver that they have not, nor has either of them, ever at any time entered into any contract of any kind with the complainant in this cause, and that the only obligation which they, or either of them, have ever assumed and undertaken, if the said requests signed by the said Jewett and Thomson be treated as the requests of these defendants and binding on them at law and in equity, and if the said act of said Smith in the execution of said bridge con-

29 tract be treated as in law and in equity the act of said Columbus Company, has been, was and is assumed and undertaken to the Columbus Company alone in the nature of a request for action by that company, which action, if lawfully taken, might have rendered that company liable to the complainant company, but could not and did not subject either of these defendant companies to any liability, except to the said Columbus Company, which liability, whenever asserted by and properly prosecuted by the said Columbus Company, these defend-
30 ants will meet as in law and in equity they may be required.

And these defendants, further answering, deny that the said Columbus Company has ever in fact or in law been dissolved. Upon information and belief they deny that said Columbus Company has now no property whatever. Upon information and belief they deny that the Columbus Company has now no property, does no business and has no office in the State of Illinois. Upon information and belief they deny that
31 the said Columbus Company has no officer in the Northern District in Illinois, on whom process can be served. They deny that Benjamin E. Smith was the last person elected president of said Columbus Company. They admit that said Benjamin E. Smith has departed this life. They deny that said Columbus Company has no other than a nominal existence. On the contrary, they aver that it is an existing company with a complete and perfect organization, owning property and possessing all its powers and franchises
32 unimpaired. They deny that such Columbus Company has now no interest, or substantial interest, in this suit as alleged in said bill of complaint. They deny that said Columbus Company, if made party to this cause, would only be a formal or nominal party herein. On the contrary, they aver that it is an existing corporation, duly organized and consolidated under the laws of the States of Ohio, Indiana and Illinois, and that it is a necessary party to this cause, and that without its presence and participation in this case as a party hereto the same cannot lawfully

pass to decree, and they and each of them plead, aver 33
and rely on the omission of the plaintiff to make the said Columbus Company a party defendant to this suit as a full and complete bar and defense as against any liability on their part to answer or to be subjected to any decree herein.

Nevertheless, protesting that by reason of the said omission of the plaintiff to make the said Columbus Company party hereto they are not required to answer herein, these defendants, each answering for itself and not for its co-defendant, admit that on or 34
about the 1st day of February, 1870, a further agreement was entered into between the parties to said Indenture of lease (called in the said bill of complaint, "lease and contract") modifying and varying the terms thereof.

They admit that a true copy of said instrument of modification is filed with said bill of complaint marked Exhibit "D." They aver that the execution of said instrument of modification was authorized by the Directors and stockholders of said Columbus and Pittsburgh 35
Companies, respectively, and by the directors of said Pennsylvania Company at meetings regularly and duly held, and by majorities which would have been sufficient under the laws of the States in which said companies are organized, to have sanctioned the execution of said instrument of modification, had the same not been in conflict with the provisions of said laws; but they aver that said instrument of modification is not and was not in conformity with or authorized by the laws of the States of Ohio, Indiana and Illinois, but is 36
and was expressly prohibited by the laws of the State of Ohio, and the same, therefore, has no legal or binding effect upon the parties hereto.

These defendants further answering, each for itself and not for its co-defendant, say, that the *fourth* article of said amended lease, being the same instrument of which a copy is filed with said bill of complaint, marked Exhibit "D," was in the words and figures following, to wit:

ARTICLE 4. Any defects of power or authority (if

such there be), to enter into and effectuate the agreement of January 22, 1869, and of this present agreement existing between the parties thereto, shall be removed and the requisite authority therefor be obtained at the earliest practicable time; and thereupon either party may require of the other the due execution of such instruments as will perfect, confirm and render operative and binding said agreement."

These defendants, further answering, each for itself, and not for its co-defendant, say, that the agreement of January 22, 1869, in said Article IV. described, is the same original indenture of lease of the railway property and franchises of said Columbus Company to said Pittsburgh Company, whereof a copy is filed with said bill of complaint, marked "Exhibit B," and they further aver that none of the said defects of power or authority to enter into and effectuate said agreements were or have been removed, nor was the requisite authority therefor ever obtained, nor did either of said parties require or become entitled to require or demand the execution of any instrument perfecting, confirming and rendering operative and binding said agreement, nor was any such instrument ever executed.

And these defendants further answering, each for itself and not for its co-defendant, admit that, on or about the 6th day of June, 1871, the said parties to said original bridge contract entered into an agreement commonly known as the *first* Amendment to said original agreement, and modifying the same in some respects, a true copy of which amendment is annexed to said bill of complaint marked "Exhibit E." They further admit that they believe the contents and purport of said *first* Amendment to be correctly described in said bill of complaint; but they refer to said exhibit, by way of qualification of this admission, so that if it shall in any respect appear that the said description of the contents and purport of said *first* Amendment be not in accord with the said amendment as copied in the said exhibit, the same may be corrected by the exhibit.

These defendants have no information sufficient to justify the belief that said *first* Amendment was

entered into by any party thereto before said bridge had been accepted by the Bridge Company from the contractors who had constructed the same. They are, therefore, unable either to admit or deny the averments of the bill of complaint to that effect, but leave the same to be proved by the complainant according to the ordinary course of proceedings in equity. They further deny that the said *first* Amendment was entered into before the completion of the bridge; on the contrary, they aver that the same was executed and entered into long after the full completion of said bridge, and long after the use of said bridge had been begun by the said parties to said contract. They aver that said bridge was completed, and the use thereof begun by some one or more of the railroad companies parties to said original bridge contract on or before the 10th day of June 1871, and that on that day the complainant began to charge the parties to said bridge contract, and that from said date it rendered accounts against them.

Further answering, they deny that said *first* amendment was executed by said Columbus Company; on the contrary, they aver that the same was subscribed, and the corporate seal of the company thereto attached by Benjamin E. Smith, president of the said company, without the knowledge or consent of any of the directors or stockholders of the said company, as required by the laws of the States of Ohio, Indiana and Illinois, and that the same has never since been ratified by said directors or stockholders. They aver that such execution of said contract by said Smith in the name of said Columbus Company and the attaching of the corporate seal thereto were after, and not before, the completion of said bridge, and after, and not before, the acceptance thereof by the Bridge Company from the contractors who constructed the same, and that the same was not authorized by the laws of the States of Indiana and Illinois, and was expressly prohibited by the laws of Ohio.

And these defendants, each for itself, and not for its co-defendant, further answering, admit that on or

45 about the 25th day of November, 1871, the said parties to said original bridge contract entered into a further agreement, under their corporate seals (commonly known as the *second* amendment to said original bridge contract), and they believe that the purport and effect of the same is accurately described in said bill of complaint, and admit that a true copy thereof is attached to said bill of complaint, marked "Exhibit F." This admission of the accuracy of the description in said bill, of the purport and effect of the said *second*
46 amendment, they pray may be taken subject to correction, if necessary, by the original contract itself as copied and annexed to said bill of complaint marked "Exhibit F."

They deny, however, that said *second* amendment was lawfully executed by the said Columbus Company, although the same was, as they admit, signed by Benjamin E. Smith, as president thereof, and its corporate seal thereto attached; but the same was done, as they aver, by said Smith, without the knowledge or assent
47 of its directors or stockholders, and contrary to law, the same not being authorized by the laws of the States of Indiana and Illinois, and being expressly prohibited by the laws of the State of Ohio, under which said corporation was organized.

These defendants, further answering, each for itself, and not for its co-defendant, deny that either of said *first* or *second* amendments of said bridge contract was entered into by the said Columbus Company at the request of these defendants. They admit that such requests
48 were made in writing to the said Smith as President of said Columbus Company, by Thomas A. Scott, President of the Pittsburgh Company, and J. Edgar Thompson, President of The Pennsylvania Railroad Company, respectively, after the completion of said bridge, and reciting the fact of such completion, but they aver that the same were without any consideration moving to the companies of which they were presidents, or either of them, and without any authority from the Board of Directors or stockholders of either of said companies, and without any knowledge on the part of said directors

and stockholders that the same was to be or had been done. They admit that true copies of said requests are attached to said bill of complaint marked "Exhibit G." 49

They aver that said requests did not constitute and create any contract obligation between the companies of which said presidents were officers and the complainant, and would not have resulted, if lawful and valid, in creating or establishing any obligation or legal or equitable duty whatever to the complainant, but only to said Columbus Company, and they further aver that the said requests, and each of them, were made upon the express condition that the said Pittsburgh Company and the Pennsylvania Company should 50

"assume all the liabilities and obligations and be entitled to all the benefits of said modifications, the same as if they had been specifically named and made part of the said *ninth* article of the said lease and contract,"

of the said Columbus Company to and with the said Pittsburgh Company and the Pennsylvania Company, bearing date the 22d day of January, 1869, being the said indenture of lease aforesaid, and not otherwise. 51

And these defendants further aver and claim the fact and law to be, that, if the said original bridge contract and its said amendments had been lawfully entered into and been binding upon the said Columbus Company, and if the said requests had been entered into and been binding on the said Pittsburgh Company and the Pennsylvania Company, nevertheless that, by force of the said contract and of the *ninth* article of the said lease, the termination of said lease by eviction or otherwise would have ended and determined the same, and they aver that, by the eviction hereinafter described, all consideration therefor failed, and that the said eviction did in fact terminate all liability, duty and obligation of the defendants or either of them, owing to the complainant or to the said Columbus Company, growing out of the said requests, or either of them, or growing out of the said assumptions contained in the said *ninth* article of the said lease. 52

Further answering, these defendants, each for itself,

53 and not for its co-defendant, deny that the Columbus Company, or either of these defendants has, at any time, since the completion of said bridge in June, 1871, used, or had the benefit of, or that either of the said defendants still continues to use or have the benefit of said bridge, or of said bridge contract or any modification or amendment thereof, for any purpose or in any manner whatsoever.

Further answering, these defendants, each for itself, and not for its co-defendant, aver that, by reason of
54 the said facts and circumstances, the said original bridge contract and the modification thereof, dated June 6th, 1871, and the second or subsequent modification thereof are, and each of them is, wholly without consideration, so far as each of these defendants is concerned—that the said requests so made by the said Thomas L. Jewett and J. Edgar Thomson, presidents respectively, and by the said Thomas A. Scott and J. Edgar Thomson, presidents respectively, addressed to Benjamin E. Smith, president of the said Columbus
55 Company, were mere voluntary acts or gratuities, without any authority derived, at any time, from the boards of directors of any of said companies, or from the stockholders of any of the said companies, and without any consideration moving to the companies of which they were respectively presidents, or from the complainant, by reason whereof the said requests did not, nor did either of them, create or impose any liability at law or in equity upon either of these defendants, either to the said Columbus Company or to the complainant.

56 And these defendants, further answering, each for for itself and not its co-defendant, admit that soon after the execution of said original bridge contract, dated January 19, 1869, the complainant commenced the construction of the bridge across the Mississippi River at Keokuk, Iowa, and that on or before the 10th day of June, 1871, it completed the same suitable for the transit of railway trains, together with tracks upon said bridge, connecting the same with the railways of railway companies at each end of the bridge, in accordance

with said contract, and that the complainant has ever since maintained and kept the said bridge in repair. 57

These defendants, further answering, each for itself and not for the other, deny that the complainant then or ever connected said bridge, or the tracks on the same, with any railway owned, or otherwise in any manner controlled, by either of the defendants hereto, or by the said Columbus Company. They admit that soon after the execution of said indenture of lease, bearing date January 22, 1869, purporting to be made between the Columbus Company, party of the first part, the Pittsburgh Company, party of the second part, and the Pennsylvania Railway Company, party of the third part, the said Pittsburgh Company took possession of the railroad of the said Columbus Company, with its appurtenances; but they deny that since the completion of said bridge, in 1871, as aforesaid, or at any other time, either the Columbus Company, the Pittsburgh Company or the Pennsylvania Railway Company has used or had the benefit of, or still continues to use or have the benefit of, said bridge for the passage of passenger and freight trains over the said river at Keokuk, Iowa. 58 59

Further answering, these defendants, each for itself and not for its co-defendant, admit that copies of the said requests, together with copies of the said bridge contracts, were furnished about the time of the signature thereof by said Smith, as aforesaid, to the Pittsburgh and the Pennsylvania Railroad Companies by the Bridge Company. They further admit, although they fail to see the relevancy of the same to this controversy, that at the time of the execution of the said bridge contract and the modifications thereof by the complainant, The Pennsylvania Railroad Company was seeking to secure a larger share of traffic, not only from the Toledo, Peoria and Warsaw Railroad, but from all railroads in the United States the rails of which came directly, or remotely—viz., through other and intervening railroads—into physical connection with its own rails, and they admit that, for the purpose of enabling The Pennsylvania Railroad Company more perfectly to perform the public duties imposed upon it by 60

its charter, the Commonwealth of Pennsylvania incorporated the Pennsylvania Company, the larger part of the stock of which was subscribed to and is now owned by The Pennsylvania Railroad Company. But they deny that the Pennsylvania Company has been, at any time or now is, under the absolute or any other control of The Pennsylvania Railroad Company, and they deny that The Pennsylvania Railroad Company has continuously or otherwise had, from the time of the execution of the original bridge contract, or at any other time, the control of a continuous line of railroad from Philadelphia to the Illinois State line, and they further deny that The Pennsylvania Railroad Company owns or controls lines of railroad which, with their connections, form a continuous line of railroad from the City of Philadelphia, by way of the Keokuk and Hamilton bridge, to the Pacific coast, unless the term "connections" aforesaid be understood to embrace railroads with which the Pennsylvania Railroad is physically so connected that a car may be transferred from the rails of one of said lines to those of the other, but which are not in any other manner connected. On the contrary, they aver that the western termini of the Columbus Company are, and each of them is, more than two hundred miles east of the Keokuk and Hamilton bridge; that the lines of railroad extending from the two termini of the Columbus Company, viz.: Chicago, being the northwestern terminus, and the Illinois and Indiana State boundary line west of Logansport, being the southwestern terminus of the Columbus Company, to said bridge, are, and each of them is, occupied by lines of railroad belonging to independent companies, none of which are, or ever have been, in any manner, under the control of the Columbus Company or of either of the defendants to this case, and they further aver that since the date of the eviction hereinafter described, there has been interposed and is now interposed between said termini and the western terminus of the Pittsburgh Company at Columbus, Ohio, the line of railroad owned by the Chicago, St. Louis and Pittsburgh Railroad Company,

five hundred and eighty-six and one-half miles in length, no part of which has been or is within the control of either of the defendants to this case, but the same has since said eviction been and is an independent line of railroad controlled and managed by the Board of Directors of the said Chicago, St. Louis and Pittsburgh Railroad Company. 65

Further answering, these defendants, each for itself and not for the other, deny that at the time of the execution of the said original bridge contract or any of the said amendments thereof, the Pennsylvania Railway Company was seeking through its ownership and control of the Pittsburgh, Cincinnati and St. Louis Railroad Company, and the Columbus, Chicago and Indiana Railway Companies, through connections reaching the Mississippi River at Warsaw, opposite Keokuk, Iowa, to secure a short route and large traffic between the Atlantic and Pacific States, crossing the Mississippi River at Keokuk; on the contrary, they deny that the Pennsylvania Railway Company has, or ever had, any ownership or control of the Pittsburgh, Cincinnati and St. Louis Railway Company, and the Columbus, Chicago and Indiana Central Railway Company, or either of them, or of any of their connections reaching the Mississippi River at Warsaw, opposite Keokuk, Iowa. They deny that The Pennsylvania Railroad Company had before the execution of said bridge contract aided the Toledo, Peoria and Warsaw Railroad Company. They admit, although they fail to see the relevancy of the averment to that effect in the bill contained, that The Pennsylvania Railroad Company had caused to be organized transportation companies, and that it had established agencies at Keokuk and other places in the far West, for the purpose of procuring traffic over its own road and connecting lines, and that on February 10, 1869, the president and directors of The Pennsylvania Railroad Company, in their report to the shareholders of said company, stated that the restless spirit of their rivals in the East and West rendered it necessary to make connections with the chief trade centres with the West more perfect and less liable in the future to mo- 66 67 68

lestation and interruption; that this had been done to a great extent through a lease of the Pittsburgh, Cincinnati and St. Louis Railway Company, guaranteed by The Pennsylvania Railroad Company, of the lines of the Columbus, Chicago and Indiana Central Railroad Company; that the rapid progress made by the Union and Central Pacific Railroads indicated a completion of a railroad line across the continent during the ensuing summer; and that, when opened throughout, the Pennsylvania Railroad and its immediate Western connections would present the shortest line to and from the great cities of the Atlantic seaboard, either by way of Chicago, St. Louis, or by an intermediate route in progress from Keokuk westward, connecting the Union Pacific road near Fort Kearney, and that this advantage would secure to it a fair and reasonable share of the large traffic that would be carried between the Atlantic and Pacific States. They further admit that in a subsequent report of the Directors of The Pennsylvania Railroad Company to the shareholders, made February 18th, 1871, after referring to the tendency of rival interests to divert the traffic of the West from the Pennsylvania lines and control its feeders, which they perfected by securing the absolute control of such feeders, they said:

"This control was effected by the lease for 999 years by the Columbus, Chicago and Indiana Central Railroad Company and of the Little Miami Railway Company to the Pittsburgh, Cincinnati and St. Louis Railroad Company, which your Company controls by the ownership of a large majority of its shares. * * * With a view to give greatest simplicity and efficiency to the management of this Western interest, and as far as practicable return to our former policy, a charter was obtained from the Commonwealth of Pennsylvania incorporating the "Pennsylvania Railroad Company," to which all the interests above mentioned of The Pennsylvania Railroad Company will be transferred on the 1st of March next, and $8,000,000 of the preferred capital stock of the Pennsylvania Company received therefor, which amount covers fully all of our expenditures in this connection. The whole capital of the Pennsylvania Company will consist of $8,000,000

of preferred, and not exceeding $4,000,000 of common stock. All the profits of the corporation during 1871, after meeting the obligations of the lines leased, are to be used by the managers in perfecting and equipping the railroads transferred to it." 73

And these defendants, further answering, each for itself and not for the other, admit, although they fail to see the relevancy of the same to this controversy, the averment of the bill that in their report of March 13, 1877, to the shareholders, the directors of the Pennsylvania Company said : 74

"The lines owned or otherwise controlled by your company, west of Pittsburgh, over which all the large through traffic to and from the Pensylvania Railroad east of Pittsburgh is handled, are all operated by the Pennsylvania Company, whose general office is at Pittsburgh."

But they aver that said Pennsylvania Company did not then, and never since has operated any railroad west of the said western termini of the Columbus Company. 75

Further answering, these defendants each for itself and not for the other, repeating their denial that from the time of the making of said original bridge contract, and from the time of the completion of the Keokuk and Hamilton Bridge, either of these defendants has had connections with other lines of railroad reaching across Illinois to and across the Mississippi by way of the Keokuk and Hamilton Bridge Company, which connect with other lines of railroad west of the Mississippi River having connections by railroad reaching across the continent, nevertheless admit that there are lines of railroad interposed and intervening between the western termini of the line of the Columbus Company, now owned by the Chicago, St. Louis and Pittsburgh Company, and the eastern end of the Keokuk and Hamilton Bridge, and that it is, and since said date has been, physically practical to move cars without break of gauge from the said western termini to and across the said bridge, but they deny that, by contract or otherwise, either of these 76

77 defendants has had business connections or done any considerable amount of business over and across said connecting and intervening lines of railroad, and over and across said bridge.

These defendants, further answering, each for itself, and not for its co-defendant, say that they have not information sufficient to justify them in admitting that the aggregate net earnings to the complainant from railway freight traffic across said bridge and from all other sources since the making of said
78 original bridge contract, has not, in any one year, amounted to the sum of eighty thousand dollars, and they therefore deny the same, but they aver that, to the extent of the said one-fourth charged to said Pittsburgh Company by complainant, on any such deficiency of earnings or guarantee account necessary to make up the difference of said net receipts from freight traffic over said bridge and the sum of forty thousand dollars for each term of six months prior to the first day of March, 1883, the same has been fully paid.

79 And these defendants, further answering, each for itself, and not for its co-defendant, admit the averments of the said bill of complaint wherein the same charges the filing by the complainant in this Court, of its bill in chancery on the 25th day of July, 1881, against these defendants, and all and singular the averments of said bill of complaint, stating the contents of the pleadings, proceedings, orders and decrees in said cause, to this extent, to wit: that the same are, in substance, as averred in said bill, a portion, but are not the whole of
80 said pleadings, proceedings, orders and decrees, and to the end that this admission may be correct in detail they hereto attach, and pray that the same may be taken as a part of this answer, as fully as if recited and set forth herein, a true and full transcript and copy of the pleadings, proceedings, orders and decrees in said cause as the same now appear of record in this Court, marked "Exhibit No. 1;" but they further say that this admission is made and is to be taken and held subject to the following facts, which they aver by way of de-

fense, as well as by way of qualification of said admis- 81
sion:

First. The bill of complaint in said cause as originally filed in the Circuit Court of Cook County, in the State of Illinois (from which said cause was duly removed to this Court), did not join the Columbus Company as a party defendant. Thereafter these defendants jointly and severally demurred to said bill for the reason of the want of a necessary party, viz., of said Columbus Company. The Circuit Court of Cook 82
County sustained said demurrer, whereupon the complainant amended its bill accordingly and caused process to be issued and served on said Smith, as president of said Columbus Company. Thereafter said Smith answered in the name of said company as hereinafter described.

Secondly. The recovery under said bill of complaint and in said cause was for deficiency in bridge earnings to the first day of March, 1883, and not later. No claim 83
was alleged or prayer or demand of relief made by complainant in said cause for the recovery of any such deficiency accruing at any date later than said first day of March, 1883.

Thirdly. The Pittsburgh Company remained and was in undisturbed possession of the railroad property and premises so as aforesaid alleged to have been leased to it by the Columbus Company to and until the 17th day of March, 1883, when it was wholly 84
dispossessed of the same, and evicted therefrom and from all rights under said alleged lease and amended lease and contract by the Chicago, St. Louis and Pittsburgh Railroad Company, to which the same had been conveyed by William L. Scott, Charles J. Osborn and John S. Kennedy, who had purchased the same at judicial sale under the decrees of foreclosure described in said bill of complaint, and to whom the said title had been confirmed and ordered by this Court to be conveyed accordingly; that the title so con-

85 veyed to the said Chicago, St. Louis and Pittsburgh Railway Company was the title of all parties to foreclosure suits instituted and prosecuted in this Court and in the Circuit Courts of the United States for the District of Indiana, and the Southern District of Ohio, by James A. Roosevelt and William R. Fosdick, trustees under the said mortgage made by the said Columbus Company, and described in the said bill of complaint, against the said Columbus and Pittsburgh Companies and The Pennsylvania Railroad Company, which mort-
86 gage was made, executed and delivered and bonds thereunder were issued and sold prior to the commencement of said suits, and prior to the execution of said alleged lease and amended lease and contract, and prior to the acquisition of any rights thereunder, if any were so acquired by any party thereto, and prior to the said original bridge contract and each amendment thereto or modification thereof, by virtue of which eviction, the said Pittsburgh Company and the Pennsylvania Company lost and ceased to have any right,
87 title or interest to, or any claim or demand upon said railway premises, property and franchises, in or under said lease or amended lease, and became relieved thereby from all obligations, duties and liabilities imposed by the *ninth* clause of said lease, and by the said requests, or either of them, and by the said original bridge contract or any amendment or modification thereof.

Fourthly. That the interlocutory decrees appointing
88 said Roosevelt and Fosdick Receivers, as aforesaid, and directing conveyances to be made to them, recited in said bill of complaint, made by this Court and by the Circuit Courts of the United States for the District of Indiana and for the Southern District of Ohio, in said foreclosure suits, were and each of them was subject to the direction and qualification that, until further order of the said Courts therein, said Receivers should not disturb the possession of said mortgaged premises by the said Pittsburgh Company under the lease thereof, but should collect and receive the rental payable by said

Pittsburgh Company or by the Pennsylvania Company, the guarantor in said lease mentioned, under and in pursuance to the provisions of said lease, and should apply the same in such manner as should be provided by the further order of said Court. 89

Fifthly. That during the prosecution of said foreclosure suits, in the last paragraph of this answer described, no order was at any time made by any of said Circuit Courts, that said Receivers should disturb the possession of said mortgaged premises by said Pittsburgh Company, until and unless the decrees for the confirmation of said sale, and for the making of said deed to said Scott, Osborn and Kennedy, purchasers aforesaid, and that they be put in possession of said mortgaged premises so by them purchased with the right to affirm or disaffirm said lease and amended lease, and their disaffirmance thereof, which lease and amended lease they did on or about March 1, 1883, disaffirm, and not sooner, be held to be orders disturbing the possession of said Pittsburgh Company; but on the contrary, the said Pittsburgh Company continued in peaceable possession of said premises until the eviction hereinbefore described, on the seventeenth day of March, 1883, as aforesaid. 90 91

Sixthly. That by decree of the Circuit Court of the United States for the District of Indiana, made and entered on the 27th day of April, 1876, in a certain cause then pending in said Court in equity, being the same suit described in the bill of complaint filed herein, wherein the Pittsburgh Company was complainant, and the said Columbus Company and the said James A. Roosevelt and William R. Fosdick, The Pennsylvania Railroad Company, and James Pullan were defendants, it was ordered, adjudged and decreed that the said Pittsburgh Company should on or before the 1st day of June, 1876, and thereafter, from time to time, pay to the credit of said cause into the National Bank of Commerce of New York, as a deposit in the name of James A. Roosevelt and William R. Fosdick, who had 92

before that time been appointed Receivers in said foreclosure suits, to the credit of said Receivers, but not subject to be drawn out except in pursuance of the orders of said Court in said cause, the sums then and from time to time thereafter admitted to be the amount of the net earnings of the Columbus Company, received and receivable by the Pittsburgh Company for and on account of its operation of said railroad from and after the 1st day of January, 1875. That said order was duly complied with by said Pittsburgh Company, and deposits were made as so directed, from time to time, but amounting at all times to sums very much less than the minimum rental payable by and under said lease and amended lease, and said sums were paid out and distributed in obedience to interlocutory decrees of said Court, made in said cause, from time to time, until final decree as hereinafter stated. That said cause was begun by the filing of a bill and amended bill in Chancery in said Court by said Pittsburgh Company, against the said Columbus Company, said James A. Roosevelt and William R. Fosdick, the said Pennsylvania Railroad Company and James Pullan, and that the said Columbus Company appeared and answered therein, and the said Roosevelt and Fosdick appeared and filed their answer therein, and their cross-bill, whereto they made the said Pittsburgh and Columbus Companies, respectively, and The Pennsylvania Railroad Company defendants. That the object and prayer of the said bill and amended bill were for the rescission and cancellation of said lease and amended lease, and the object and prayer of said cross-bill were for an accounting by and recovery from the Pittsburgh Company, as lessee, and The Pennsylvania Railroad Company, as guarantor of the lease and amended lease aforesaid, of the amount of rental then due and to grow due during the pendency of said cause, according to the terms of said lease and amended lease. That the said Pittsburgh Company and the said Pennsylvania Railroad Company duly appeared and answered said cross-bill, and in their said amended bill, and also by way of answer to said cross-

bill, set up and averred the aforesaid orders for payment of rental into Court and the execution thereof by compliance therewith by said Pittsburgh Company as constituting an eviction of said Pittsburgh Company of and from the leased premises aforesaid. That thereupon such proceedings were had that the cause came on for final hearing, when it was finally ordered and adjudged by said Court that the same did not constitute an eviction of the said lessee from the said premises, and the complainants in the said cross-bill recovered accordingly, from which final decree appeals were duly taken by the said Pittsburgh Company and the said Pennsylvania Company, respectively, to the Supreme Court of the United States, which appeals were duly perfected and docketed therein, and afterwards, on motion of said appellants, respectively, were dismissed, whereby the said final decree affirming that the making and enforcement of said orders for payment of said rental were not an eviction of the said lessee from the said demised premises became, were and are valid and binding decrees in equity, and wholly unreversed, all which was fully shown in said cause in chancery instituted by said complainant in this Court, as aforesaid. 97 98 99

These defendants further answering, each for itself and not for the other, admit that the Pittsburgh Company has failed and refused to make settlements on the 1st day of September and March of each year, or at any other time since March 1st, 1883, of the amounts which would be required to net to the said complainant from railroad freight traffic over said bridge the sum of $40,000, for the previous six months, or to pay to said complainant any proportion of any said deficit as claimed to have been provided for by said bridge contracts and said amendments thereto, but that upon demand it has refused and still refuses to do so. 100

These defendants further answering, each for itself and not for the other, deny that to ascertain the amount, if any there be, due from the said Pittsburgh Company by virtue of the said bridge contract, and the amendments thereto, as its proportion of such deficit, since March 1st, 1883, involves an examination of the accounts

101 of the complainant with each and all or any of the railroad companies using said bridge for the past six years before the commencement of this suit, and of all or any of the various sums expended by said complainant in the operation, repair, maintenance, or alteration of said bridge during the like period, and they further deny that such examination owing to its complexity, extent or otherwise cannot well or adequately be had in a court of law. They further aver that all such accounts are in the complainant's possession, and that none of
102 them is in the possession of either of the defendants.

And these defendants further aver that the controversy between the complainant on the one part and themselves on the other is a controversy within the cognizance of the courts of common law only, and not of courts of equity, and they, therefore, deny that the jurisdiction of this Court has attached, or can attach, for the purpose of rendering any decree in equity against them, or either of them, and they pray that this part of their answer may be treated as a denial of or
103 plea to the jurisdiction as fully as if they had separately pleaded, and set up as an objection to the jurisdiction of this Court its want of power to hear this cause as being within its equitable cognizance, it being a cause at common law only, by plea or otherwise.

And these defendants, each for itself and not for the other, further answering, admit that the complainant caused statements to be made up and furnished to the said Pittsburgh Company of the amounts by the complainant claimed to be required to be paid by said Pitts-
104 burgh Company as its proportion of the sum payable to said complainant for each six months previous to the first day of March and September, respectively, since March 1, 1883, in order to net to said complainant the sum of $40,000 from railroad freight traffic during said period, but that said Pittsburgh Company has denied its obligation to pay the same or any part thereof. These defendants are at a loss to understand how the averments of said bill to the effect last aforesaid can be reconciled with the statement that the examination necessary to make up and furnish said statements, owing

to its complexity and extent, cannot be well and adequately had in a court of law, unless it be true that the statements so made up and furnished were incomplete or inaccurate, and unless the notice and demand of the complainant upon The Pennsylvania Railroad Company hereinafter referred to, and in said bill of complaint described, be now admitted by the complainant to be a false claim for a sum of money not known or believed by the complainant to be due to it, as to which they have no information sufficient to justify a belief, but leave the correctness of said statements to be proved by said complainant according to the course of procedure in equity. 105 106

These defendants, further answering, each for itself and not for the other, admit that on the 20th day of August, 1889, the complainant gave notice in writing to said Pennsylvania Railroad Company, as required by the terms of said indenture of lease and amended lease, of the default of said Pittsburgh Company to pay to the complainant the sum of $61,622.78 and interest, and demanded of said Pennsylvania Railroad Company that it pay said sum, with interest, as will more fully and at large appear by reference to a copy of said written notice attached to said bill of complaint marked "Exhibit K," which these defendants admit to be a true copy of the original notice served upon said Pennsylvania Railroad Company; but these defendants deny the right of the complainant to make or enforce any such demand because of the invalidity of said lease and amended lease and the invalidity and want of consideration of said bridge contract, and by reason of the eviction, ouster and termination of said lease aforesaid. 107 108

Further answering, these defendants, each for itself and not for the other, admit that the statements of the supplemental answers and of the Master's report, as set forth in said bill of complaint, as to the sale under foreclosure decree of the property rights and franchises of the Columbus Company and the subsequent transfer of the same to the Chicago, St. Louis and Pittsburgh Railroad Company, are true. They deny that in said

former suit said Columbus Company disclaimed any interest in the matter in controversy. They aver that, in collusion with the complainant and at its instance, Benjamin E. Smith, then president of the Columbus Company, without the knowledge of any of the directors or stockholders of said company, filed an answer in said cause, in the name of said Columbus Company, a true copy of which answer attested by Theodore Gilman, secretary of the plaintiff, is to be found in the transcript of the record of the pleadings and proceedings in said cause being Exhibit A, hereto attached, whereby, in the name of said Columbus Company, he attempted to disclaim any interest in the matter in controversy, and that said averment of disclaimer is true to the foregoing extent and not otherwise.

Further answering, these defendants, each for itself, and not for its co-defendant, deny that said Scott, Kennedy and Osborn purchased the property, rights and franchises of the Columbus Company not for themselves but in the interest of the said Pennsylvania Company, or with the understanding and intention that they should thereafter convey the same to a corporation in the interest of and controlled by said Pennsylvania Company. They deny that said Chicago, St. Louis and Pittsburgh Railroad Company is a corporation organized in the interest of said Pennsylvania Company for the purpose of acquiring by conveyance from said purchasers Scott, Kennedy and Osborn the said property, rights and franchises of said Columbus Company, and of using, operating and controlling the same in the interest and under the control of the said Pennsylvania Company, and they deny that said Pennsylvania Company had, at the time of said conveyance to the Chicago, St. Louis and Pittsburgh Railroad Company, ever has had, or now has, the complete or any control or management of said Chicago, St. Louis and Pittsburgh Railroad Company.

Further answering, these defendants, each for itself, and not for its co-defendant, say that they do not know whether the said sum of sixty-one thousand six hundred and twenty-two $\frac{78}{100}$ dollars ($61,622.78), in said

bill of complaint described, or any part thereof, has 113
or has not been paid to the complainant by any of said Railroad Companies, or any one else, and they do not know whether the same remains due and wholly unpaid, and they have no information whereon to base a belief as to the truth or falsehood of said averments, and therefore leave the plaintiff to prove the same according to the course of procedure in equity; but they deny that, if it were possible for the complainant to collect said amount or any part thereof from said Columbus Company, the amount 114
so collected would constitute a valid claim in favor of said Columbus Company against these defendants, or either of them, and they deny that by reason of the premises or otherwise these defendants or either of them became or are liable in equity to pay to the complainant one-fourth or any other part of the amount required to net the complainant, from railroad traffic over said bridge, the sum of forty thousand dollars for each six months prior to the first days of September and March respectively in each year since said first day of March, 115
1883, or any other sum of money whatever.

And to the several interrogatories attached to said bill of complaint they answer as follows, to wit:

In answer to the *first* interrogatory they admit that the complainant did bring a suit in chancery as alleged in its said bill of complaint and hereinbefore admitted, and as shown by Exhibit A, hereto attached.

In answer to the *second* interrogatory they admit that in said suit in chancery the bill did contain the allegations which in its bill of complaint herein it is alleged 116
were contained therein as hereinbefore admitted, and as shown by the copy of said bill of complaint contained in the exhibit hereto annexed.

In answer to the *third* interrogatory they admit that answers containing allegations, denials and claims as alleged in the said bill of compaint herein, were filed in said former suit as hereinbefore admitted, and as more specifically shown by the copies of said answers contained in the exhibit hereto annexed.

In answer to the *fourth* interrogatory they admit

117 that such proceedings were had in said former suit as alleged in said complaint and as hereinbefore admitted, and more specifically shown in the copy of said proceedings contained in the exhibit hereto attached.

In answer to the *fifth* interrogatory they admit that Exhibits "A," "B," "C," "D," "E," "F" and "G," to the bill of complaint, are correct copies of the various documents, respectively, of which they appear to be copies, as said copies were proved in said former suit.

118 In answer to the *sixth* interrogatory they admit that the complainant did on or about the 20th day of August, 1889, serve said Pennsylvania Railroad Company with a notice, of which Exhibit "K" to said bill of complaint is a copy.

In answer to the *seventh* interrogatory they deny the allegations of the foregoing bill of complaint, and each of them, as to the said purchase by the said Scott, Kennedy and Osborn and the subsequent conveyance by them to the said Chicago, St. Louis and Pittsburgh
119 Railroad Company, and the organization, management and control of said last-mentioned company, except as hereinbefore admitted, and inasmuch as they have already in this answer specifically pointed out in what particulars the same are not true, they therefore refer to the foregoing answer as containing their specific denial of said allegations in particulars without repetition thereof.

And having fully answered, these defendants pray to be hence dismissed with their costs.

120 J. T. Brooks,
Solicitor for Defendants.

Geo. Hoadly,
Of Counsel.

121

STATE OF PENNSYLVANIA, }
County of Philadelphia, } ss.:

GEORGE B. ROBERTS, being duly sworn, deposes and says, that he is the president of the Pittsburgh, Cincinnati and St. Louis Railway Company and of The Pennsylvania Railroad Company, defendants in the above-entitled suit in equity described; that he has read the 122
foregoing answer and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes the same to be true.

G. B. ROBERTS.

Sworn to and subscribed before me this 25th day of November, 1890.

AL. P. BURCHELL, 123
[SEAL.] Notary Public,
Philadelphia, Pa.

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125 *Exhibit No. 1—Bill.*

The following **Exhibit No. 1,** to the foregoing answer, contains copies of the pleadings, orders and decrees in this Court in the case hereinafter named, being the same referred to upon page 20 of the foregoing answer.

Bill Filed in Circuit Court of Cook County, Illinois, July 25, 1881, (Cause removed to U. S. Circuit Court, April 28, 1882).

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IN THE CIRCUIT COURT OF THE UNITED STATES,

FOR THE NORTHERN DISTRICT OF ILLINOIS,

IN CHANCERY.

127 THE KEOKUK AND HAMILTON BRIDGE COMPANY

vs.

THE PITTSBURGH, CINCINNATI AND ST. LOUIS RAILWAY COMPANY and THE PENNSYLVANIA RAILROAD COMPANY.

Bill.

TO THE HONORABLE THE JUDGES OF THE CIRCUIT COURT OF COOK COUNTY:

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Your orator, the Keokuk and Hamilton Bridge Company, a corporation existing by and under the Laws of the States of Illinois and Iowa, complains and says that on or about the 16th day of February, 1869, an agreement, dated January 19th, 1869, was entered into between the Toledo, Peoria and Wabash Railway Company, party of the first part, the Des Moines Valley Railroad Company, party of the second part, the Columbus, Chicago and Indiana Central Railway Company, party of the third part, the Toledo, Wabash and West-

ern Railway Company, party of the fourth part, and your orator, party of the fifth part, whereby, among other things, your orator agreed to construct across the Mississippi River, at Keokuk, Iowa, a substantial wrought-iron bridge, suitable for the transit of railway trains, to lay a track upon said bridge, and connect the same with railways belonging to the other parties to said agreement, and to maintain and keep in repair said bridge and track in perpetuity, so that trains 130 might safely cross over said bridge.

Your orator further shows that by said agreement it granted to the other parties thereto in perpetuity the right to the use of said bridge for the purpose of passing their passenger and freight trains across the Mississippi River. In consideration whereof the other parties to said contract agreed, among other things, to pay your orator certain rates for the transportation of freights across said bridge, as established by schedule attached to said agreement and made part thereof, 131 which provided, among other things, that the aggregate net earnings from freight in any one year should not fall below the sum of eighty thousand dollars to your orator, and in case the said sum of eighty thousand dollars was not reached at the end of any year under the schedule rate, then the other parties to said agreement agreed to make up to your orator such deficiency, each of the said parties for itself, and not for the others, paying said deficiency in proportion to the tonnage it had passed over said bridge, each being responsible for 132 itself, and not for the others; all of which will more fully appear by reference to said agreement and the schedule thereto attached, copies of which are hereto annexed, marked " Exhibit A," and prayed to be taken as part of this bill.

And your orator further shows that although said agreement purports to have been executed on the 19th day of January, 1869, it was not, in fact, executed by the said The Columbus, Chicago and Indiana Central Railway Company till some time afterwards, and then

133 *Exhibit No. 1—Bill.*

only at the request of the Pittsburgh, Cincinnati and St. Louis Railway Company and the Pennsylvania Railroad Company, which companies on or about the 29th day of January, 1869, by virture of a lease and contract made by the said The Columbus, Chicago and Indiana Central Railway Company to and with said the Pittsburgh, Cincinnati and St. Louis Railway Company and the Pennsylvania Railroad Company, bearing
134 date the 22d day of January, 1869, became the lessee of said Columbus, Chicago and Indiana Central Railway Company, a copy of which lease and contract is herewith filed, marked "Exhibit B," and prayed to be taken as part of this bill.

And your orator further shows that the said request of the said Pittsburgh, Cincinnati and St. Louis Railway Company, and of the said Pennsylvania Railroad Company was in writing, bears date February 16, 1869, is addressed to B. E. Smith, president of the said Col-
135 umbus, Chicago and Indiana Central Railway Company, and after referring to a proposed contract between the Toledo, Peoria and Wabash Railway Company, party of the first part, the Des Moines Valley Railway Company, party of the second part, the Columbus, Chicago and Indiana Central Railway Company, party of the third part, the Toledo, Wabash and Western Railway Company, party of the fourth part, and your orator, party of the fifth part, being the same contract hereinbefore first above mentioned, for, among other things,
136 the construction and use of a substantial wrought-iron bridge across the Mississippi River at Keokuk, Iowa, which contract was under negotiation and unexecuted by the Columbus, Chicago and Indiana Central Railway Company at the date of the final execution of the contract and lease of said last-named company's railroad and property to and with the Pittsburgh, Cincinnati and St. Louis Railway Company and the Pennsylvania Railroad Company, and was not included among the contracts of the said Columbus, Chicago and Indiana Central Railway Company, assumed by the lessee under

their lease from said last-mentioned company, on behalf of the said lessee, the Pittsburgh, Cincinnati and St. Louis Railway Company, and the Pennsylvania Railroad Company, party to said lease and contract, requests the said B. E. Smith, president of said Columbus, Chicago and Indiana Central Railway Company, officially as such president, to execute said bridge contract, with the understanding that the said lessee and Pennsylvania Railroad Company shall assume all the 138
liabilities and obligations and be entitled to all the benefits of said bridge contract, the same as if it had been specifically named and made part of the ninth article of the said lease and contract of the Columbus, Chicago and Indiana Central Railway Company to and with the Pittsburgh, Cincinnati and St. Louis Railway Company and the Pennsylvania Railroad Company, bearing date the 22d of January, 1869, as will more fully appear by reference to said written request, a copy of which is hereto annexed, marked "Exhibit C," 139
and prayed to be taken as part of this bill.

And your orator further shows that in and by the ninth article of said lease and contract hereinbefore mentioned, the said Columbus, Chicago and Indiana Central Railway Company assigned and transferred to the said Pittsburgh, Cincinnati and St. Louis Railway Company all its right and interest in certain contracts therein mentioned, and the said Pittsburgh, Cincinnati and St. Louis Railway Company assumed and agreed, at its own risk and expense, to carry out each and all 140
said contracts according to their respective tenors and legal liabilities, receiving and enjoying all benefits to be derived therefrom, and by the sixteenth article of said lease the said Pennsylvania Railroad Company, for a consideration therein expressed, guaranteed to said Columbus, Chicago and Indiana Central Railway Company that the said Pittsburgh, Cincinnati and St. Louis Railway Company would, in good faith, do and perform all and singular the matters and things which

141 by said lease and contract it had covenanted and agreed to do, and upon any failure or default of the said Pittsburgh, Cincinnati and St. Louis Railway Company to keep and perform any and all of its said agreements and covenants it, the said Pennsylvania Railroad Company, would, upon notice to it in writing, of the kind and nature of such failure or default, do, keep and perform the same for and on behalf of the
142 said Pittsburgh, Cincinnati and St. Louis Railway Company.

And your orator further shows that on or about the first day of February, 1870, a further agreement was entered into between the parties to said lease and contract, dated January 22, 1869, modifying and varying in some respects the terms and conditions of said original lease and contract, a copy of which further agreement is herewith filed, marked "Exhibit D," and prayed to be taken as part of this bill.

143 And your orator further shows that by article 5 of said further agreement it was provided that the annual gross earnings mentioned in the sixth article of the original agreement should be held to mean the annual gross revenues of the Columbus, Chicago and Indiana Central Railway Company after the deduction therefrom, among other things, of all *pro rata* bridge tolls.

And your orator further shows that on or about the 6th day of June, 1871, the parties to said original bridge contract entered into an agreement commonly
144 known as a first amendment to said original agreement, and modifying the same in some respects, a copy of which first amendment is hereto annexed, marked "Exhibit E," and prayed to be taken as part of this bill.

And your orator further shows that by said first amendment it was, among other things, agreed that instead of the railway companies, parties to said original bridge contract, making good any sum necessary to net your orator from railway freight traffic over said bridge the sum of eight thousand dollars per annum, *pro rata*, in proportion to the tonnage passed over the bridge by

each railway company, the deficiency, if any, necessary to be paid, in order to produce to your orator at the rate of eighty thousand dollars per annum from railway freight traffic, should be made good by each of the four railway companies, to wit, the Toledo, Wabash and Western, the Toledo, Peoria and Warsaw, the Des Moines Valley, and the Columbus, Chicago and Indiana Central Railway Companies, by each for itself, and not for the others, paying one-fourth part of the deficiency, if any.

And it was further agreed, among other things, by said first amendment that, in addition to the payment of tolls monthly upon traffic, as provided in the original contract, that upon the first day of March and September in each year settlements for the previous six months should be made, and the amounts required to net your orator from railroad freight traffic the sum of forty thousand dollars for the said previous six months should be promptly paid over to the treasurer of your orator by the railroad companies severally, who were parties to said contract, each paying one-fourth of said deficiency.

And your orator further shows that on or about November 25, 1871, the parties to said original bridge agreement, dated January 19, 1869, and said first amendment thereto, dated June 6, 1871, entered into a further agreement, commonly known as a second amendment to or modification of said previous contracts of January 19, 1869, and June 6, 1871, by which provision was made for the application of the net revenues of your orator, fixing a limit to the amount of the same, and providing that payments made under the previous contracts by the railroad companies parties thereto toward making up the sum necessary to meet the bonded interest of your orator, the obligation to do which was reaffirmed, should be considered as advances to be paid out of the first surplus revenues of your orator, after payment of the bonded interest and

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expenses, before any dividends were made upon the capital stock, and providing also for a lease by your orator on certain conditions of its bridge and approaches to said railroad companies, the parties to said previous contracts, all which will more fully appear by reference to said second amendment, a copy of which is hereto annexed, marked "Exhibit F," and prayed to be taken as part of this bill. And your orator further shows
150 that said first and second amendments were each entered into by the said The Columbus, Chicago and Indiana Central Railway Company at the request in writing of the said Pittsburgh, Cincinnati and St. Louis Railway Company and the Pennsylvania Railroad Company, which said requests were made by the presidents of the said last-mentioned railroad companies, respectively, in communications addressed to the president of the Columbus, Chicago and Indiana Central Railway Company in the words and figures following,
151 to wit :

"B. E. SMITH, ESQ., Prest. C., C & I. C. Ry. Co.

"SIR—Referring to the letter of the president of this company, dated February 16th, 1869, requesting you, as president of the Columbus, Chicago and Indiana Central Railway Company, to enter into a certain contract for the construction of a bridge across the Mississippi River at Keokuk, Iowa, which has since been completed, we beg now to request, on behalf of the Pittsburgh, Cincinnati and St. Louis railway, the lessee of your line, and the Pennsylvania Railroad Company, party to the said lease and contract, that you will officially, as presi-
152 dent of the Columbus, Chicago and Indiana Central Railway Company, execute and agree to certain modifications of said contract concurred in by all the others, parties to said contract, and dated June 6th, 1871, it being understood that the said lessee and the Pennsylvania Railroad Company shall assume all the liabilities and obligations and be entitled to all the benefits of said modifications, the same as if they had been specifically named and made a part of the ninth article of the said lease and contract of the Columbus, Chicago and Indiana Central Railway Company to and with the Pittsburgh, Cincinnati and St. Louis Railway Company

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and the Pennsylvania Railroad Company, bearing date the 22d of January, 1869.

"Respectfully yours,

"(Signed) THOMAS A. SCOTT,

"Prest. P., C. & St. L. Ry. Co.

"Approved.

"(Signed) J. EDGAR THOMSON,

"Prest. P. R. R. Co."

"B. E. SMITH, ESQ., Prest. C., C. & I. C. Ry. Co: 154

"DEAR SIR—Certain further modification having this day (November 25th, 1871) been agreed to by the Keokuk and Hamilton Bridge Company, in the contract between that company and the railroad companies, parties to the original and amended contracts, for the use of that bridge, we hereby request you to accept the same in accordance with the terms of the foregoing letter.

"Respectfully yours,

"(Signed) THOMAS A. SCOTT,

"Prest. P., C. & St. L. Ry. Co.

"Approved. 155

"(Signed) J. EDGAR THOMSON,

"Prest. P. R. R. Co.

"PHILADELPHIA, Nov. 29th, 1871."

And your orator further shows that, soon after the execution of said bridge contract, dated January 19, 1869, it commenced the construction of a bridge across the Mississippi River at Keokuk, Iowa, and completed the same, suitable for the transit of railway trains, together with the tracks upon said bridge, connecting 156 the same with railways, in accordance with said contract, some time during the year 1871, and has ever since maintained and kept the same in repair.

And your orator further shows, upon information and belief, that soon after the execution of said lease and contract, bearing date January 22, 1869, between the Columbus, Chicago and Indiana Central Railway Company, party of the first part, the Pittsburgh, Cincinnati and St. Louis Railway Company, party of the second part, and the Pennsylvania Railroad Company,

party of the third part, the said Pittsburgh, Cincinnati and St. Louis Railway Company, as lessee thereunder, took possession of the railroad of the said Columbus, Chicago and Indiana Central Railway Company, with its appurtenances, and, under said original lease and contract, and the said amended lease and contract of February 1, 1870, has thenceforth continuously been in possession of and operated, and still continues in pos-
158 session of and operates, the railroad of the said Columbus, Chicago and Indiana Central Railway Company, and from the time of the completion of said bridge of your orator, in 1871, has had the benefit of, and still continues to have the benefit of, said bridge of your orator for the passage of passenger and freight trains and business over the Mississippi River at Keokuk, Iowa.

And your orator further shows that the aggregate net earnings to your orator from railway
159 freight traffic across said bridge and from all other sources, as provided by the said contract, dated January 19, 1869, and the said amendments thereto, has not in any one year amounted to the sum of eighty thousand dollars, the annual interest upon the said one million of mortgage bonds issued by said bridge company, nor to the sum of forty thousand dollars for any six months ending on the first days of March and September in any year since said bridge was completed and opened for traffic in 1871; that under and by vir-
160 tue of the requirements of said original agreement, bearing date January 19, 1869, and the said amendments thereto, the Pittsburgh, Cincinnati and St. Louis Railway Company, as the lessee of said Columbus, Chicago and Indiana Central Railway Company, paid to your orator one-fourth of the sum due on said deficiency of earnings or guarantee account necessary to make up to your orator the difference between the net receipts from freight traffic over said bridge and the sum of forty thousand dollars for the six months previous to the first days of March and September in each

year after March 1, 1872, till September 1, 1874, in all being $35,101.67, being one-fourth of the entire sum due your orator on said deficiency of earnings or guarantee account prior to September 1, 1874.

And your orator further shows that the net aggregate earnings to your orator from freight traffic over said bridge, according to the provisions of said bridge contract, dated January 19, 1861, and the amendments thereto, have fallen below the sum of eighty thousand 612
dollars for each and every year, and below forty thousand dollars for each and every six months previous to the first days of September and March in each and every year since September 1, 1874, to the first of September, 1880; that the said Pittsburgh, Cincinnati and St. Louis Railway Company has failed and refused to make settlements on the first days of March and September in each year, or at any other time, since September, 1874, of the amounts required to net to your orator from railroad freight traffic over said bridge the 163
sum of forty thousand dollars for the previous six months, or to pay your orator its proportion of such deficit, as required by said original bridge contract and the amendments thereto, but has refused, and still does refuse, so to do; that your orator has, from time to time, caused statements to be made up and furnished the said Pittsburgh, Cincinnati and St. Louis Railway Company of the amount required from it as its proportion of the sum required to be paid your orator for each six months ending on the first days of March and 164
September, respectively, since 1874, in order to net to your orator the sum of forty thousand dollars from freight traffic during said period, which statements have never, as your orator is informed and believes, been objected to by said Pittsburgh, Cincinnati and St. Louis Railway Company as being incorrect in the amount stated, but said last-mentioned railway company has denied its obligation to pay the same, or any part thereof; that the total amount due your orator from the said Pittsburgh, Cincinnati and St. Louis

Railway Company, as its proportion of the amount required to net your orator the sum of forty thousand dollars for each six months previous to the first of March and September in each and every year since September, 1874, to the first day of September, 1880, is eighty-four thousand three hundred ninety-eight and eighteen hundredths (84,398.18) dollars, besides interest, as will more fully appear from a copy of said statement herewith filed, marked "Exhibit G," and prayed to be taken as a part of this bill. (Exhibit G omitted from this abstract.)

And your orator further shows that neither the Columbus, Chicago and Indiana Central Railway Company, nor the Pittsburgh, Cincinnati and St. Louis Railway Company, nor any one for them or on their behalf, or on behalf of either of them, has paid the said sum of eighty-four thousand three hundred ninety-eight and $\frac{18}{100}$ dollars, or any part thereof, to your orator, but the same remains due and wholly unpaid; and that the said bridge contract, dated January 19, 1869, and the several amendments thereto, whereby the several railway companies, parties to said contracts, guaranteed that the aggregate net earnings from freight passing over said bridge in any one year should not be less to your orator than $80,000, and agreed that upon the first day of March and September in each year settlements for the previous six months should be made, and the amounts required to net to your orator from railway freight traffic over said bridge the sum of forty thousand dollars for the said previous six months, should be promptly paid over to your orator by said railway companies, parties to said contracts, each paying one-fourth of such deficiency, were each and all of them entered into by the said Columbus, Chicago and Indiana Central Railway Company at the special instance and request of the said Pittsburgh, Cincinnati and St. Louis Railway Company; and the Pennsylvania Railroad Company, after the said Columbus, Chicago and Indiana Central Railway Company had exe-

cuted the lease of its road, with its equipments and appurtenances, to the said Pittsburgh, Cincinnati and St. Louis Railway Company, and by reason of the premises the said Pittsburgh, Cincinnati and St. Louis Railway Company, and the said Pennsylvania Railroad Company, on receiving the notice specified in said lease and contract, became liable in equity to pay promptly to your orator one-fourth of the amount required to net your orator from railroad freight traffic 170 over said bridge the sum of forty thousand dollars for each six months previous to March and September in each year, as specified in said bridge contract, dated January 19, 1869, and the said amendments thereto.

And your orator further shows that on the sixth day of May, A. D. 1881, it gave notice in writing to the said Pennsylvania Railroad Company of the failure of the said Pittsburgh, Cincinnati and St. Louis Railway Company to pay your orator one-fourth the amount required to net your orator the sum of forty thousand 171 dollars for each six months from railroad freight traffic across said bridge, as hereinbefore stated, and in such notice particularly specified the kind and nature of the failure or default of the said Pittsburgh, Cincinnati and St. Louis Railway Company, and gave full and complete notice to the said Pennsylvania Railroad Company of the amount, nature and character of the before-mentioned failure and default of the said Pittsburgh, Cincinnati and St. Louis Railway Company, and by said notice did demand from the Pennsylvania Rail- 172 road Company that it pay to your orator the sum of $84,398.18, being one-fourth the amount due your orator on said deficiency or guarantee account, as hereinbefore stated, as will more fully appear by reference to a copy of said notice hereto attached, marked "Exhibit H," and prayed to be taken as part of this bill of complaint.

And your orator further states, upon information and belief, that the Columbus, Chicago and Indiana Central Railway Company, party of the third part to

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said bridge contract, dated January 19, 1869, and the first and second amendments thereto, has not, at any time since the execution of said contract, had possession or control of the railroad known as the Columbus, Chicago and Indiana Central Railway, or any of its equipments or appurtenances, nor has it at any time made use of the bridge of your orator, but that said railroad, with its equipments and appurtenances, have
174 been continuously, ever since the execution of the said lease hereinbefore mentioned to the present time, and now are, in the possession and under the control of the said Pittsburgh, Cincinnati and St. Louis Railway Company, the lessee of said railroad, with its appurtenances, and that said lessee has, during all that period, operated said railroad known as the Columbus, Chicago and Indiana Central Railroad, and in the operation thereof has had the benefit and use of the said bridge of your orator for the passage of freight and
175 passenger trains over said bridge, and has paid to your orator the tolls to which it was entitled according to the rates established by the schedule attached to the contract of January 19, 1869, and the amendments to said contract, but nothing on said deficiency of earnings or guarantee account since the payment made on account of the deficiency due September 1, 1874.

And your orator further states, upon information and belief, that the entire property of the said Columbus, Chicago and Indiana Central Railway Company is
176 subject to a mortgage antedating the execution of said bridge contract, which mortgage is in default, and has due on it more than ten millions of dollars besides several years of arrears of interest; that your orator is advised said mortgage constitutes a prior lien upon the property of said Columbus, Chicago and Indiana Central Railway Company to any which your orator can have against it on account of said deficiency in earnings or guarantee account, and that, even if your orator had a valid claim against said Columbus, Chicago and Indiana Central Railway Company for one-fourth the

amount required to make good to your orator the amount due on said deficiency of earnings or guarantee account, a suit against the said Columbus, Chicago and Indiana Central Railway Company would be fruitless and unavailing, for the reason that all its property is in the hands of the Pittsburgh, Cincinnati and St. Louis Railway Company under and by virtue of the said lease and contract hereinbefore mentioned, executed prior to the execution of the said bridge contract between 178 your orator and the said Columbus, Chicago and Indiana Central Railway Company, bearing date January 19, 1869, and for the further reason that all of said property, and the lease hereinbefore referred to, is subject to the before-mentioned mortgage, which constitutes a prior lien to any claim of your orator, and is for an amount more than sufficient to exhaust said property and any income to be derived from said lease, and your orator is informed and believes that said Columbus, Chicago and Indiana Central Railway Com- 179 pany is insolvent.

And your orator is advised that if it were possible for it to collect from said Columbus, Chicago and Indiana Central Railway Company the sum due on account of said deficiency in earnings or guarantee account, the amount so collected would constitute a valid claim in favor of said Columbus, Chicago and Indiana Central Railway Company against the said Pittsburgh, Cincinnati and St. Louis Railway Company and the Pennsylvania Railroad Company, which would be a circuitous, 180 unnecessary and expensive proceeding of no benefit to any of the parties in interest. To the end, therefore, that the said The Pittsburgh, Cincinnati and St. Louis Railway Company and the Pennsylvania Railroad Company, defendants hereto, may answer upon oath, according to the course and practice of this Court, all and singular the premises, and that, as fully as if specially interrogated, and that an account may be taken of the amount due your orator, or to become due, up to the termination of this suit, under or in virtue of said bridge

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contract, dated January 19, 1869, and the said amendments thereto, for or on account of said deficiency in earnings or guarantee account, in accordance with said contract, dated January 19, 1869, and the amendments thereto, from the said Pittsburgh, Cincinnati and St. Louis Railway Company, and its guarantor, the said Pennsylvania Railroad Company, including as well what shall hereafter become due and payable as the sum
182 which is now due and payable, and that in such account the said Pittsburgh, Cincinnati and St. Louis Railway Company, and the Pennsylvania Railroad Company, as its guarantor, may be charged with one-fourth the entire sum due on said deficiency in earnings or guarantee account for the whole period from the 1st September, 1874, to the termination of this suit, and that such interest may be charged in such account as may be proper, and that the balance due upon such accounting from the said Pittsburgh, Cincinnati and St.
183 Louis Railway Company and the Pennsylvania Railroad Company, after crediting them with such payments on account as shall hereafter be duly made during the pendency of this suit, may be ascertained and determined, and that the said Pittsburgh, Cincinnati and St. Louis Railway Company and the Pennsylvania Railroad Company, respectively, may be adjudged and decreed to pay to your orator the amount found to be due and owing from them respectively upon such accounting, with interest, together with the costs of this
184 suit, and that your orator may have such other and further relief in the premises as may be agreeable to equity and the nature of its case may require.

May it please your Honors to cause a summons to issue according to the practice in chancery cases and the provisions of the statute in such case made and provided, requiring the said Pittsburgh, Cincinnati and St. Louis Railway Company and the Pennsylvania Railroad Company to appear and answer this bill on the return day of said summons, and to stand to, abide by,

and perform such order, direction and decree therein as to your Honors shall seem meet and agreeable to equity and good conscience.

And your orator will ever pray, etc.

THE KEOKUK AND HAMILTON
BRIDGE COMPANY,
L. & P. TRUMBULL,
Its Solicitors.

LYMAN TRUMBULL,
Of Counsel.

186

Exhibits A, B, C, D, E and F, to the foregoing bill, are not reprinted, because they are identical with Exhibits A, B, C, D, E and F to bill of complaint filed in this suit.

187

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Exhibit G.

The Guaranteeing Railroad Companies in Account with the Keokuk and Hamilton Bridge Company.

Dr.

Statement No. 7—March 1, 1875.

To pay-rolls and bills from Sept. 1st, 1874, to March 1st, 1875, being the entire expenditure for the bridge		4,074 20
To amount credited floating debt, being the misc. traffic for six months ending March 1st, 1875	9,097 65	
Less charges against the same	2,318 03	
		6,779 62
Net earnings		19,652 80
		$30,506 62

Statement No. 7—March 1, 1875. Cr.

By receipts from railway earnings—

	Toledo, Warbash & Western Railway.		Toledo, Peoria & Warbash Railway.		
	Freight.	Passenger.	Freight.	Passenger.	
1874.					
August		217 25			217 25
September	1,132 99	310 85			1,443 84
Do.			1,778 33	177 90	1,956 23
October	1,315 75	229 45			1,545 20
Do.			1,297 70	92 40	1,390 10
November	1,506 47	212 25			1,718 72
Do.			1,417 67	70 55	1,488 22
December	1,576 13	236 50			1,812 63
Do.			1,895 25	117 15	2,012 40
1875.					
January	1,522 70	209 05			1,731 75
Do.			2,362 89	104 40	2,467 29
February	1,100 52	187 80			1,288 32
Do.			2,260 52	76 50	2,337 02
	8,154 56	1,603 15	11,012 36	638 90	$21,408 79

Miscellaneous traffac earnings.

1874. Sept. 1st to Oct. 1st, 1 month	2,321 45	
Oct. 1st to Nov. 1st, 1 "	2,344 70	
Nov. 1st to Dec. 1st, 1 "	1,700 30	
Dec. 1st to Jan. 1st, 1 "	1,568 00	
1875. Jan. 1st to Feb. 1st, 1 "	970 05	
Feb. 1st to Mar. 1st, 1 "	293 15	
		9,097 65
		$30,506 62

I certify the above statement to be correct. (Signed) W. CRUGER, *Superintendent.*

STATEMENT No. 8—SEPTEMBER 1, 1875.

DR.

1875, September 1:

To pay-rolls and bills from March 1st to September 1st, 1875, being the entire expenditure for the bridge		$3,977 79
To amount paid for taxes for 1874:		
Hancock county, Illinois	$8,508 52	
Lee county, Iowa	2,016 95	
City of Keokuk	1,235 00	
		11,760 47
To amount credited floating debt, being balance of ferry purchase, provided for out of miscel-anious traffic		1,396 72
To net earning- of the bridge		4,978 16
		$22,113 14

By receipts from railway earnings—

	Toledo, Peoria & Warsaw Railway.		Toledo, Warbash & Western Railway.		Monthly totals for each road.	
	Freight.	Passenger.	Freight.	Passenger.		
1875						
March	2,127 53	62 25			2,189 78	
Do.			2,219 25	246 90	2,466 15	
April	517 49	36 15			553 64	
Do.			614 19	108 25	722 44	
May	898 25	68 85			967 10	
Do.			1,033 85	177 80	1,211 65	
June	849 24	58 65			907 89	
Do.			826 66	212 60	1,039 26	
July	832 08	72 30			904 33	
Do.			458 79	225 55	684 34	
August	960 00	75 00			1,035 00	
Do.			786 93	301 20	1,088 13	
	6,184 54	373 20	5,939 67	1,272 30		$13,769 71

By miscellaneous traffic earnings—

1875, March 1st to April 1st, 1 month	880 65	
April 1st to May 1st, 1 "	1,069 90	
May 1st to June 1st, 1 "	1,243 15	
June 1st to July 1st, 1 "	1,302 20	
July 1st to August 1st, 1 "	1,421 95	
August 1st to Sept. 1st, 1 "	1,600 25	
		8,058 10
May 31st. By refunded 7-36 of State tax for 1873		285 33
		$22,113 14

I certify the above statement to be correct.
Peoria, September, 1875.

(Signed) A. L. GRIFFIN, *Superintendent.*

196 195 194 193

200 199 198 197

STATEMENT No. 9.

DR.

1876, March 1:
To pay-rolls and bills from September 1, 1875, to March 1, 1876, being the entire expenditure for the bridge $6,284 99
To net earnings of the bridge 18,152 85

$24,437 84

By receipts from railway earnings— CR.

	Toledo, Peoria & Warsaw railway.		Toledo, Warbash & Western railway.		Monthly totals for each road.
	Freight.	Passenger.	Freight.	Passenger.	
1875.					
August	$354 14				354 14
Sept	2,113 72	152 25			2,265 97
Do			681 40	319 75	1,001 15
Oct	1,970 58	210 70			2,181 28
Do			620 93	295 80	916 73
Nov	1,266 90	99 15			1,366 05
Do			530 96	213 15	744 11
Dec	1,312 03	114 30			1,426 33
Do			514 99	239 65	754 64
1876.					
January	853 44	120 75			974 19
Do			487 24	203 35	690 59
February	1,488 70	104 70			1,593 40
Do			1,113 83	219 00	
	$9,359 51	$801 85	$3,949 35	$1,490 70	$15,601 41

By miscellaneous traffic earnings—

1875. For September	$1,883 80
October	1,796 35
November	1,478 75
December	1,226 80
1876. For January	1,041 95
February	1,214 00
By interest on account.	
	24,437 84

I certify the above is correct.
New York, April 1st, 1876.

(Signed) THEODORE GILMAN, *Treas.*

STATEMENT No. 10—SEPTEMBER 1ST, 1876.

Dr.		By receipts from railway earnings—	Cr.
1876, September 1:			
To pay-rolls and bills from March 1st, 1876, to September 1st, 1876, being the entire expenditure for the bridge	6,849 55		
To amount paid Lee County, Iowa, for taxes, 1876	2,300 00		
Net earnings	13,675 50		
	$22,825 05		$22,825 05

	Toledo, Warbash & Western railway.		Toledo, Peoria & Warsaw railway.		Monthly totals for each road.
	Freight.	Passenger.	Freight.	Passenger.	
1876.					
March	1,032 72	231 70			1,264 42
Do			2,262 67	91 50	2,354 17
April	673 13	196 90			870 03
Do			1,858 27	89 70	1,947 97
May	1,212 03	194 45			1,406 48
Do			900 90	104 70	1,005 60
June	1,000 25	184 00			1,184 25
Do			1,366 08	128 55	1,494 63
July	299 36	205 85			505 21
Do			807 86	115 00	922 86
August	803 00	215 00			1,018 00
Do			939 45	135 00	1,074 45
	5,020 49	1,227 90	8,137 23	664 45	15,050 07

By miscellaneous traffic earnings—

1876. April 1, one month	844 90
May 1, "	1,049 30
June 1, "	1,175 75
July 1, "	1 258 95
August 1, "	1,311 70
September 1, one month	1,787 70
By proceeds sale old railroad iron	381 81
By interest received on account	84 87
	$22,825 05

I certify the above account to be correct.
New York, September 28, 1876.

THEODORE GILMAN, *Treas.*

STATEMENT No. 11—MARCH 1ST, 1877.

DR.

To pay-rolls and bills from September 1, 1876, to March 1, 1877, being the entire expenditure for the bridge, viz.:		
Pay-rolls		$3,369 15
Bridge equipments		534 69
Taxes—Keokuk City, 1876	$1,462 50	
Lee County, Iowa, 1876	2,047 50	
		3,510 00
Maintenance of dyke		106 61
" track and floor		1,457 84
" slough bridge		265 40
" east approach		43 84
" west "		48 67
" machinery		140 71
Legal and sundry expenses		249 75
		$9,726 66
To overestimate of R. R. earnings for July and August in S. A. Statement No. 10		65 76
Balance, being net earnings		15,959 39
		$25,751 81

By receipt from railway earnings—

CR.

	Toledo, Peoria & Warsaw R. R.		Toledo, Warbash and Western R. R.		Totals for each road.	
	Freight.	Passenger.	Freight.	Passenger.		
September	$1,009 25	231 45			$1,240 70	
Do.			856 55	247 90	1,104 45	
October	1,471 37	177 90			1,649 27	
Do.			763 65	219 15	982 80	
November	1,419 96	183 15			1,603 11	
Do.			766 78	172 35	939 13	
December	2,043 03	176 70			2,219 73	
Do.			1,139 97	173 00	1,312 97	
1877.						
January	2,359 29	134 55			2,493 84	
Do.			652 15	127 25	779 40	
February	1,570 46	143 25			1,713 71	
Do.			939 52	164 00	1,103 52	
	$9,873 36	$1,047 00	$5,118 62	$1,103 65	$17,142 63	$17,142 63
By miscellaneous traffic earnings—						
September 30th, 1876, one month					$1,702 80	
October 31st, " " "					1,970 40	
November 30th, " " "					1,272 25	
December 31st, " " "					1,715 30	
January 31st, 1877, " "					541 30	
February 28th, " " "					1,304 20	
						8,506 05
By interest on account						103 13
						$25,751 81

I certify the above to be correct.
New York, May 17th, 1877.

(Signed) THEODORE GILMAN,
Treasurer.

STATEMENT No. 12.—SEPTEMBER 1ST, 1877.

DR.

1875. September 1:

To pay-rolls and bills from March 1, 1877, to September 1, 1877, being the entire expenditure for the bridge, viz.:		
Pay-rolls		$2,361 50
Bridge equipment		395 71
Taxes Keokuk city, 1877	1,200 00	
Less 5 per cent. discount	60 00	
		1,140 00
Maintenance of track and floor		741 72
" east approach		41 99
" west "		87 99
New floor		7,671 76
Sundry legal and other expenses		1,073 91
		$14,414 58
Balance, being net earnings		3,889 49
		$18,304 07

CR.

By receipts from R. R. earnings—

	Toledo, Peoria and Warsaw R. R.		Warbash Railway Co.		Totals for each road.	
	Freight.	Passenger.	Freight.	Passenger.		
March	1,597 99	178 05			1,776 04	
Do.			1,068 13	177 35	1,245 48	
April	1,069 57	109 60			1,179 17	
Do.			515 57	147 95	663 52	
May	962 27	113 70			1,075 97	
Do.			318 23	184 75	502 98	
June	899 71	88 00			987 71	
Do.			183 16	41 05	224 21	
July	823 05	50 00			873 05	
Do.		95 91	128 45		244 36	
August	1,580 97	100 00			1,680 97	
Do.		189 08	100 00		289 03	
	6,933 56	629 25	2,370 03	779 55	10,722 49	$10,722 49

By miscellaneous traffic earnings—

1877.	March	1,003 55	
	April	1,140 75	
	May	1,001 45	
	June	1,351 55	
	July	1,234 15	
	August	1,809 69	
			7,582 05
	September 15th. By interest on account		49 58
			18,304 07

Certified by—
New York, September 15th, 1877.

THEODORE GILMAN,
Treasurer.

STATEMENT No. 13—MARCH 1ST, 1878.

DR.

To payment from 1 September, 1877, to 1 March, 1878, being the entire expenditure for the bridge, viz.:		
Pay-rolls	3,191 00	
Bridge equipment	363 84	
Taxes, Lee county, Iowa, for 1877	1,556 00	
Maintenance of dyke	338 20	
" east approach	53 03	
" west "	87 59	
" machinery	322 24	
Legal services and sundries	408 45	
		6,320 35
Interest on over-draft		3 18
To regulation of estimated tolls unpaid 1 September, 1877:		
Estimated amount in statement No. 12	3,122 12	
Amount actually received	3,111 88	
		10 24
To balance, being net earnings of the bridge for past six months		13,630 03
		$19,963 80

By receipts from railway companies— CR.

	Toledo, Peoria and Warsaw R. R.		Warbash Railway Co.		Totals for each road.	
	Freight.	Passenger.	Freight.	Passenger.		
1877.						
September	1,735 71	164 45			1,900 16	
Do.			159 44	158 93	318 37	
October	1,600 18	141 55			1,741 73	
Do.			239 54	191 13	430 67	
November	1,263 67	128 40			1,392 07	
Do.			216 15	139 80	355 95	
December	1,237 18	158 75			1,395 93	
Do.			208 04	142 70	350 74	
1878.						
January	1,435 53	165 70			1,601 23	
Do.			227 14	120 82	347 96	
February	1,635 34	170 85			1,806 19	
Do.			178 68	128 12	306 80	
	8,907 61	929 80	1,228 99	881 50		11,947 00
By miscellaneous traffic earnings—						
1877. September					1,766 50	
October					1,592 90	
November					1,133 30	
December					1,016 15	
1878. January					1,716 20	
February					750 35	
						7,975 40
October, 1877. By old material sold						40 50
						$19,963 80

I certify the above account to be correct.
New York, March 1st, 1878.

THEODORE GILMAN, *Treasurer.*

Exhibit No. 1—Exhibit G.

STATEMENT No. 14—SEPTEMBER 1ST, 1878.

DR.

To payment from 1 March, 1878, to 1 September, 1878, being the entire expenditure for the bridge, viz. :		
Pay-rolls		3,291 50
Bridge equipment		377 52
Taxes—expenses	5 20	
Paid Hancock county, Ill., in settlement—back taxes	982 00	
Keokuk city taxes, 1878	1,342 50	
		2,329 70
Maintenance of dyke		70 60
" track floor		1 25
" east approach		6 37
" west "		1 00
" machinery		40 25
Painting the bridge		324 76
Legal services and sundries		753 17
		7,096 12
To balance, being net earnings of the bridge for past six months		11,636 88
		18,733 10

CR.

By receipts from railway companies—

	Toledo, Peoria and Warsaw R. R.		Warbash Railway Co.		Totals for each road.	
	Freight.	Passenger.	Freight.	Passenger.		
1878.						
March	1,246 59	169 25	.....	.....	1,415 84	
Do.	.....	.....	189 20	155 73	344 93	
April	1,625 97	106 10	.....	.....	1,732 07	
Do.	.....	.....	120 48	120 72	241 20	
May	2,514 01	118 10	.....	.....	2,632 11	
Do.	.....	.....	70 51	105 13	175 64	
June	1,044 67	113 85	.....	.....	1,158 52	
Do.	.....	.....	67 58	95 63	163 21	
July	1,082 53	100 00	.....	.....	1,182 53	
Do.	.....	.....	152 20	107 45	259 65	
August	1,501 76	100 00	.....	.....	1,601 76	
Do.	.....	.....	107 00	100 00	207 00	
	9,015 53	707 30	706 97	684 66	.....	11,114 46
By Miscellaneous traffic earnings—						
1878. March					1,113 15	
April					1,181 85	
May					1,052 70	
June					1,196 55	
July					1,213 70	
August					1,773 95	
						7,530 90
March, by material of old floor sold						15 00
April, " "						37 75
September 13, by interest on account						34 99
						$18,733 10

I certify the above account to be correct.
New York, September 17th, 1878.

THEODORE GILMAN, *Treasurer.*

220 219 218 217

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STATEMENT No. 15—MARCH 1st, 1879.

By receipts from railway companies— CR.

DR.

To payment from 1 September, 1878, to March 1st, 1879, being the entire expenditure for the bridge, viz.:		
Pay-rolls	3,199 75	
Bridge equipment	326 82	
Taxes—State of Iowa and Lee County, 1878	1,350 00	
Maintenance of dyke	16 75	
" track floor	44 74	
" slough bridge	17 23	
" east approach	22 75	
" west approach	12 20	
" machinery	313 73	
Repropping west slough bridge	686 87	
Legal services	155 00	
Erecting 3 towers by order U. S. light-house board	600 05	
New floor	21 04	
Painting bridge	356 11	
Printing and sundries	53 36	
		7,176 40
To balance, being net earnings of the bridge for six months ending 1 March, 1879		13,052 93
		$20,229 33

	Toledo, Peoria & Warsaw R. R.		Warbash Railway Co.		Totals for each month.	
	Freight.	Passenger.	Freight.	Passenger.		
1878.						
September	1,691 20	186 65	.....	.....	1,877 85	
Do.	.....	.....	114 61	109 25	223 86	
October	1,441 42	202 20	.....	.....	1,643 62	
Do.	.....	.....	142 20	128 58	270 78	
November	1,470 01	135 45	.....	.....	1,605 46	
Do.	.....	.....	104 30	96 60	200 90	
December	1,947 96	122 70	.....	.....	2,070 66	
Do.	.....	.....	79 76	103 98	183 74	
1879						
January	1,941 20	100 50	.....	.....	2,041 70	
Do.	.....	.....	61 83	72 28	134 11	
February	1,775 59	158 20	.....	.....	1,933 79	
Do.	.....	.....	93 58	84 75	178 33	
	10,267 38	905 70	596 28	595 44	.....	12,364 80
By miscellaneous traffic earnings—						
1878. September					1,773 15	
October					1,703 75	
November					1,456 80	
December					1,252 45	
1879. January					482 00	
February					1,019 85	
						7,688 00
By old material sold						80 15
By regulation of estimated receipts in statement No. 14, tolls unpaid 1 September, 1878					4,536 48	
Estimated in statement No. 14					4,440 10	
Balance now credited						96 38
						$20,229 33

I certify the above account to be correct.
New York, March 1st, 1879.

THEODORE GILMAN, *Treasurer.*

Exhibit No. 1—Exhibit G.

STATEMENT No. 16—SEPTEMBER 1st, 1879.

DR.

To payment from 1 March, 1879, to 1 September, 1879, being the entire expenditure for the bridge, viz:		
Pay-rolls	3,131 05	
Bridge equipments	271 60	
Taxes—Keokuk city, 1879	1,057 50	
Maintenance of dyke	4 19	
" track-floor	22 50	
" east approach	921 32	
" west approach	85 67	
" machinery	897 30	
Legal services	175 00	
Sundries, expenses of N. Y. office	3 25	
		$6,569 08
To balance, being net earnings of the bridge for the past six months		12,801 70
		$19,370 78

By receipts from railway companies— CR.

	Toledo, Peoria and Warsaw R. R.		Wabash Railway Co.		Totals for each road.	
	Freight.	Passenger.	Freight.	Passenger.		
1879.						
March	$1,486 76	$168 00	.....	.....	$1,654 79	
Do.	.....	.....	$91 29	$106 63	197 92	
April	1,179 73	115 05	.....	.....	1,294 78	
Do.	.....	.....	59 47	101 32	160 79	
May	1,210 90	122 50	.....	.....	1,333 40	
Do	.....	.....	168 89	108 30	227 19	
June	1,212 46	111 10	.....	.....	1,323 56	
Do.	.....	.....	177 79	89 05	266 84	
July	1,544 33	150 00	.....	.....	1,694 33	
Do.	.....	.....	237 54	152 18	389 72	
August	1,666 13	100 00	.....	.....	1,766 13	
Do.	.....	.....	180 53	100 00	280 53	
	$8,300 31	$776 65	$915 51	$657 48	.....	$10,639 95
By highway traffic earnings—						
1879. March					$1,186 95	
April					1,167 25	
May					1,162 95	
June					1,154 80	
July					1,328 10	
August					1,755 45	
						7,755 50
By old material and sundries						808 77
By interest on account						166 56
						$19,370 78

I certify the above account to be correct.
New York, September 13th, 1879.

(Signed) THEODORE GILMAN, *Treasurer.*

228 227 226 225

STATEMENT No. 17—MARCH 1ST, 1880.

DR.			CR.						
					By receipts from railway companies—				
						Toledo, Peoria and Warsaw R. R.		Warbash Railway Co.		Totals for each road.	
						Freight.	Passenger.	Freight.	Passenger.		
To payments from 1st September, 1879, to 1st March, 188–, expenditure for the bridge, as follows:					1879.						
Pay-rolls	3,058 80				September	1,446 80	194 65			1,641 45	
Bridge equipments	391 73				Do.			111 80	116 00	227 80	
Taxes	1,036 80				October	2,381 05	194 00			2,575 05	
Maintenance of dyke	312 74				Do.			134 61	140 85	275 46	
" track and floor	75 50				November	2,168 07	139 30			2,307 37	
" east approach	30 80				Do.			125 23	92 63	217 86	
" west approach	14 65				December	2,172 99	180 25			2,353 24	
" machinery	120 12				Do.			120 42	136 80	257 22	
Inspection and repair stringers	195 57				1880.						
Repairing piers	480 73				January	1,957 25	183 75			2,141 00	
New float	2,500 79				Do.			60 74	105 93	166 67	
Legal services	288 13				February	2,113 59	180 95			2,294 54	
Office expenses	50 88				Do.			109 47	124 52	233 99	
		8,557 24				12,239 75	1,072 90	672 27	706 73		14,691 65
To balance, being net earnings of the bridge for six months ending 1st March, 1880		14,417 45			By miscellaneous traffic earnings—						
					1879. September					1,554 85	
					October					1,795 25	
					November					1,216 00	
					December					1,251 95	
					1880. January					939 00	
					February					1,155 40	
											7,912 45
					By express and sundries						84 25
					By regulation of estimated receipts in statement No. 16, tolls unpaid 1st September, 1879					3,843 28	
					Estimated in statement No. 16					3,740 99	
					Balance now credited						103 29
					By interest on account						183 05
		$22,974 69									$22,974 69

Exhibit No 1—Exhibit G.

STATEMENT No. 18—SEPTEMBER 1ST, 1880.

Dr.	
To payments from 1st March, 1880, to 1st September, 1880, being the entire expenditure for the bridge, viz:	
Pay rolls	3,518 65
Bridge equipment	398 63
Taxes	13,312 00
Maintenance of dyke	351 29
" of track and floor	65 99
" east approach	172 72
" west approach	39 07
" machinery	111 90
" west toll house	14 00
Repairing piers	1,024 77
Painting	12 30
Repair of stringers	675 95
Legal services	2,625 25
Office expenses	13 73
	22,331 75
To balance, being net earnings of bridge for six months ending 1st September, 1880	1,333 99
	$23,665 74

By receipts from railway companies— Cr.

	Toledo, Peoria and Warsaw R. R.		Wabash Railway Co.		Totals for each road.	
	Freight.	Passenger.	Freight.	Passenger.		
1880.						
March	2,583 72	174 95	.....	.....	2,758 67	
Do.	.....	.....	118 49	125 70	244 19	
April	1,849 02	137 00	.....	.....	1,986 02	
Do.	.....	.....	67 87	105 88	173 25	
May	2,757 14	175 95	.....	.....	2,933 09	
Do.	.....	.....	94 76	110 65	205 41	
June	2,309 11	100 00	.....	.....	2,409 11	
Do.	.....	.....	102 73	124 32	227 05	
July	1,453 41	100 00	.....	.....	1,553 41	
Do.	.....	.....	92 45	100 00	*192 45	
August	2,619 22	100 00	.....	.....	2,719 22	
Do.	.....	.....	150 00	150 00	300 00	
	13,571 62	787 90	625 80	716 55	.....	15,701 87
By miscellaneous traffic earnings—						
1880. March					1,156 50	
April					1,081 30	
May					1,090 35	
June					1,224 50	
July					1,481 20	
August					1,748 90	
						7,882 75
By express and sundries						60 36
By interest on account						20 77
						$23,665 74

237 *Exhibit No. 1—Exhibit G.*

Guarantee Accounts.

1875. With Statement No. 7.

March 1. Six months' interest on $1,000,000 eight per cent. bridge bonds..... $40,000 00
Less amount of net earnings—see statement No. 7..... 19,652 80

Deficiency..... 20,347 20
¼ due from each of the guaranteeing railways..... 5,086 80

238

1875. With Statement No. 8.

Sept. 1. Six months' interest on $1,000,000 eight per cent. bridge bonds, from 1st March to 1st September, 1875..... $40,000 00
Less amount of net earning—see statement No. 8..... 4,978 16

Deficiency..... 35,021 84
¼ due from each of the guaranteeing railways..... $8,755 46

239 1876. With Statement No. 9.

March 1. Six months' interest on $1,000,000 eight per cent. bridge bonds, from 1st September, 1875, to 1st March, 1876..... $40,000 00
Less amount of net earnings, same time..... $18,152 85
Less incidental expenses, omitted in statement No. 8 774 18
17,368 67

Deficiency..... $22,621 33
¼ due from each of guaranteeing railroads..... 5,655 33¼

240

1876. With Statement No. 10.

Sept. 1. 6 months interest on $1,000,000 eight per cent. bridge bonds, from March 1st to September 1st, 1876..... $40,000 00
Less amount net earnings same time..... 13,675 50

Deficiency..... $26,324 50
¼ due from each of the guaranteeing railroads..... $6,581 12½

1877. With Statement No. 11.

March 1. By 6 months' interest on $1,000,000 eight per cent. bridge bonds, from September 1st, 1876, to March 1st, 1877..... $40,000 00

Exhibit No. 1—Exhibit G. 241

GUARANTEE ACCOUNTS.—*Continued.*

	Less amount net earnings as by statement No. 11		15,959 39
	Deficiency	$24,040 61	
	¼ due from each of guaranteeing roads		$6,010 15¼
1877.	With Statement No. 12.		
September 1.	By six months' interest on $1,000,000 eight per cent. bridge bonds, from March 1st, 1877, to September 1st, 1877	$40,000 00	242
	Less amount net earnings as by statement No. 12		3,889 49
		$36,110 51	
	¼ due from each guarantor		$9,027 62
1878.	With Statement No. 13.		
March 1.	By 6 months' interest on $1,000,000 8 per cent. bridge bonds, from 1st September, 1877, to 1st March, 1878	$40,000 00	
	Less amount of net earnings, same time, as by statement No. 13		13,630 03 243
	Deficiency		26,369 97
	¼ due from each guaranteeing railroad company		6,592 49¼
1878.	With Statement No. 14.		
September 1.	By 6 months' interest on $1,000,000 8 per cent. bridge bonds, from 1st March, 1877, to 1st September, 1878	$40,000 00	
	Less amount of net earnings, same time, as by statement No. 14		11,636 98 244
	Deficiency	$28,363 02	
	¼ due from each guaranteeing railroad company		7,090 75½
1879.	With Statement No. 15.		
March 1.	By 6 months' interest on $1,000,000 8 per cent. bridge bonds, from 1 September, 1878, to 1 March, 1879	$40,000 00	
	Less amount of net earnings, same time, as by statement No 15		13,052 93
	Deficiency	$26,947 07	
	¼ due from each guaranteeing railroad company		$6,736 76

245 *Exhibit No. 1—Exhibit H.*

GUARANTEE ACCOUNTS.—*Continued.*

1879.	With Statement No. 16.	
September 1.	6 months' interest on $1,000.000 8 per cent. bridge bonds, from 1 March, 1879, to 1 September, 1879	$40,000 00
	Less earnings, as by statement No. 16	12,801 70
	Deficiency	$27,198 30
	¼ due from each guaranteeing railroad	$6,799 57½

246

1880.	With Statement No. 17.	
March 1.	By 6 months' interest on $1,000,000 8 per cent. bridge bonds, from 1st September, 1879, to 1st March, 1880	$40,000 00
	Less amount of net earnings, as by statement No. 17	14,417 45
	Deficiency	$25,582 55
	¼ due from each guaranteeing railroad	$6,395 63

247

1880.	With Statement No. 18.	
September 1.	By 6 months' interest on $1,000,000 8 per cent. bridge bonds, from 1st March to 1st September, 1880	$40,000 00
	Less amonnt of net earnings of the bridge, as by statement No. 18	1,333 99
	Deficiency	$38,666 01
	¼ due from each guaranteeing railroad	$9,666 50

248

Exhibit H.

NEW YORK, April 27th, 1881.

GEO. B. ROBERTS, ESQ.,

President of the Pennsylvania R. R. Co'y.:

SIR—Under the contract between the Columbus, Chicago and Indiana Central Railway Company and others and the Keokuk and Hamilton Bridge Company, dated January 19th, 1869, and the subsequent amendments thereof, there is now due to said bridge company

from the Pittsburg, Cincinnati and St. Louis Railway Company, the lessee of said Columbus, Chicago and Indiana Central Railway Company, under the guaranty contained in said contract, as amended, various sums of money, as hereinafter set forth.

At the time said contract was entered into by said Columbus, Chicago and Indiana Central Railway Company, its railroad, &c., had been leased by it to the said Pittsburgh, Cincinnati and St. Louis Railway Company by a lease to which the Pennsylvania Railroad Company was a party, and the officers of the Columbus, Chicago and Indiana Central Railway Company signed the said original contract with said bridge company, and the several amendments thereof, at the written request of the then presidents of the said Pittsburgh, Cincinnati and St. Louis Railway Company and of said Pennsylvania Railroad Company, respectively, contained in letters which also stated that it was understood that the Pittsburgh, Cincinnati and St. Louis Railway Company and the Pennsylvania Railroad Company should assume all the liabilities and obligations, and be entitled to all the benefits of said bridge contract, the same as if it had been specifically named and made a part of the ninth article of the said lease from the Columbus, Chicago and Indiana Central Railway Company to the Pittsburgh, Cincinnati and St. Louis Railway Company, to which the Pennsylvania Railroad Company was a party. 250 251

The said sums now due to said bridge company from said Pittsburgh, Cincinnati and St. Louis Railway, are as follows: 252

Amount due under settlement which should have been made March 1st, 1875, as per statement rendered March 25th, 1875, $5,086.80.

Amount due under settlement which should have been made September 1st, 1875, as per statement rendered October 15th, 1875, $8,755.46.

Amount due under settlement which should have

been made March 1st, 1876, as per statement rendered May 26th, 1876, $5,655.33.

Amount due under settlement which should have been made September 1st, 1876, as per statement rendered December 30th, 1876, $6,581.12.

Amount due under settlement which should have been made March 1st, 1877, as per statement rendered July 18th, 1877, $6,010.15.

254 Amount due under settlement which should have been made September 1st, 1877, as per statement rendered October 7th, 1878, $9,027.62.

Amount due under settlement which should have been made March 1st, 1878, as per statement rendered October 7th, 1878, $6,592.49.

Amount due under settlement which should have been made September 1st, 1878, as per statement rendered October 7th, 1878, $7,090.75.

Amount due under settlement which should have
255 been made March 1st, 1879, as per statement rendered June 26th, 1879, $6,736.76.

Amount due under settlement which should have been made September 1st, 1879, as per statement rendered January 25th, 1881, $6,799.57.

Amount due under settlement which should have been made March 1, 1880, as per statement rendered January 25th, 1881, $6,395.83.

Amount due under settlement which should have been made September 1, 1880, as per statement ren-
256 dered January 25th, 1881, $9,666.50.

Besides interest upon said several sums from the time said statements were respectively rendered.

The Pittsburgh, Cincinnati and St. Louis Railway Company having failed to pay any of said several sums, or any part thereof, and thereby having failed to keep or perform the covenant of said lease as to said contract with said bridge company, notice is hereby given to the Pennsylvania Railroad Company, as required by the 16th article of said lease, of such default on the part of the Pittsburgh, Cincinnati and St. Louis

Railway Company, and the Keokuk and Hamilton Bridge Company hereby demands of the Pennsylvania Railroad Company that it, as required by its guaranty contained in said 16th article of said lease, pay said several sums of money with interest to the said Keokuk and Hamilton Bridge Company.

ANDREW CARNEGIE,
Prest. Keokuk and Hamilton Bridge Company.

258

STATE OF PENNSYLVANIA, }
County of Philadelphia, } ss.:

CHARLES B. MCMICHAEL, being duly sworn, deposes and says that he delivered a copy of the foregoing notice to George B. Roberts, president of the Pennsylvania Railroad Company, on the 6th day of May, A. D. 1881, at the City of Philadelphia, in the State 259
of Pennsylvania, and further saith not.

CHARLES B. MCMICHAEL.

Subscribed and sworn to }
before me this 6th day }
of May, A. D. 1881. }
Witness my hand and official seal.

[SEAL.] S. HENRY NORRIS,
A Commissioner for the State of New York.

260

261 *Exhibit No. 1—Exhibit H.*

And thereupon, on the 20th day of October, 1881, the Pennsylvania R. R. Co., by Messrs. Willard & Driggs, its solicitors, filed its certain appearance, and a certain demurrer of all the defendants was filed in said cause, which said appearance and demurrer are in the words and figures following, to wit:

STATE OF ILLINOIS, } ss.:
Cook County, }

262

IN THE CIRCUIT COURT THEREOF.

IN CHANCERY.

KEOKUK AND HAMILTON BRIDGE COMPANY

vs.

263 PITTSBURGH, CINCINNATI AND ST. LOUIS RAILWAY COMPANY and PENNSYLVANIA RAILROAD COMPANY.

And now comes the said defendant, The Pennsylvania Railroad Company, and enters its appearance in the above-entitled cause.

WILLARD & DRIGGS,
Solictors for Pennsylvania Railroad Company.

264

Exhibit No. 1—Exhibit H. 265

Demurrer.

STATE OF ILLINOIS, } ss.:
Cook County. }

IN THE CIRCUIT COURT THEREOF.

IN CHANCERY.

266

KEOKUK AND HAMILTON BRIDGE COMPANY

vs.

PITTSBURGH, CINCINNATI AND ST. LOUIS RAILWAY COMPANY and PENNSYLVANIA RAILROAD COMPANY.

267

The joint and several demurrer of the Pittsburgh, Cincinnati and St. Louis Railway Company and the Pennsylvania Railroad Company.

These defendants, by protestation, not confessing or acknowledging all or any of the matters and things in the said complainant's bill to be true, in such manner and form as the same are therein set forth and alleged, do demur thereto, and for causes of demurrer show:

1. That the complainant is not entitled upon said 268
bill to the relief it prays for, because it has a plain and adequate remedy at law.

2. That it appears from the said complainant's bill that the Columbus, Chicago and Indiana Central Railway Company is a necessary party to said bill, inasmuch as it is therein stated that said Columbus, Chicago and Indiana Central Railway Company executed the said alleged agreement and contract on its part for the erection, use and maintenance of said bridge, and is one of the principals to said agreement

269 *Exhibit No. 1—Exhibit II.*

and contract, and that these defendants are only guarantors or sureties for the performance on the part of the said Columbus, Chicago and Indiana Central Railway Company of the terms of said conditions of said alleged contract or agreement; but the said complainant hath not made the said Columbus, Chicago and Indiana Central Railway Company a party to said bill.

270 Wherefore, these defendants demand the judgment of this Honorable Court whether they shall be compelled to make any further or other answer to the said bill, or any of the matters and things therein contained, and pray to be hence dismissed, with their reasonable costs in this behalf sustained.

WILLARD & DRIGGS,
Solicitors for Pittsburgh, Cincinnati and St. Louis Railway Company and Pennsylvania Railroad Company.

271

And thereupon, on the thirty-first day of January, 1882, the following proceedings were had and entered of record in said cause, to wit:

THE KEOKUK AND HAMILTON BRIDGE COMPANY	
272 vs.	38699—2541.
PITTSBURGH, CINCINNATI AND ST. LOUIS RAILWAY COMPANY, ET AL.	

This day came the parties, by their respective solicitors, and thereupon came on to be heard the demurrer of the defendants to the complainant's bill of complaint in this cause.

The Court, after hearing counsel for the respective parties, and being now fully advised in the premises, doth sustain said demurrer and doth grant the complainant leave to amend the bill of complaint herein by making the Columbus, Chicago and Indiana Central Railroad Company a party defendant.

274

And thereupon, on the 11th day of February, 1882, a certain order was made and entered of record, and certain amendments to the bill of complaint were filed in said cause, which said order and amendments are in the words and figures following, to wit :

Order February 11, 1882.

275

THE KEOKUK AND HAMILTON BRIDGE COMPANY	
vs.	386989—2541.
PITTSBURGH, CINCINNATI AND ST. LOUIS RAILWAY COMPANY, ET AL.	

BILL.

276

On motion of solicitors for the complainant, it is ordered that leave be, and it hereby is, granted the complainant to amend the bill of complaint herein instanter.

And on like motion it is ordered that the defendants plead, answer or demur to the amended bill within ten days from date.

277 *Exhibit No. 1—Exhibit H.*

Amendments to Bill.

STATE OF ILLINOIS, } ss.:
Cook County, }

IN THE CIRCUIT COURT, COOK COUNTY,

JANUARY TERM, A. D. 1882.

278

THE KEOKUK AND HAMILTON BRIDGE COMPANY vs. THE PITTSBURGH, CINCINNATI, ST. LOUIS RAILWAY COMPANY and THE PENNSYLVANIA RAILROAD COMPANY.	In Chancery.

279 And now comes the said complainant, by L. and P. Trumbull, its solicitors, and, by leave of said Court first had and obtained, amends its said bill of complaint as follows:

By striking out in line four, on page eleven of said bill, the words "your orator," and inserting in lieu thereof the following: "To ascertain the amount of such deficit for each and every six months prior to the first day of September and March in each and every year since September 1, 1874, to the present time, as pro-
280 vided by said bridge contract and the amendments thereto, involves the examination of long and complicated accounts; that your orator, from the best information it could obtain."

By striking out in line eight, of said page eleven, the word "cash," and inserting in lieu thereof the word "each."

By striking out in the ninth line of said page eleven the words "since 1874," and inserting in lieu thereof the words, "from September 1st, 1874, up to and including September 1st, 1880."

By inserting in the seventeenth line of page fifteen of said bill before the words "the Pittsburgh" the words "the Columbus, Chicago and Indiana Central Railway Company."

And by inserting in the twenty-second line of the sixteenth page of said bill, before the words "Pittsburgh, Cincinnati," the words "the Columbus, Chicago and Indiana Central Railway Company, the."

282

And thereupon, on the 15th day of March, 1882, the appearance and answer of the C. C. & I. C. Ry. Co. was filed in said cause, in words and figures [following] to wit:

Answer of the Columbus, Chicago and Indiana Central Railway Company.

STATE OF ILLINOIS, } ss.: 283
County of Cook, }

IN THE CIRCUIT COURT OF COOK COUNTY,

FEBRUARY TERM, 1882, IN CHANCERY.

THE KEOKUCK AND HAMILTON BRIDGE COMPANY.

vs. 284

THE PITTSBURGH, CINCINNATI AND ST. LOUIS RAILWAY COMPANY, THE PENNSYLVANIA RAILROAD COMPANY, and THE COLUMBUS, CHICAGO AND INDIANA (*sic*) RAILWAY COMPANY.

And now comes the said Columbus, Chicago and Indiana Central Railway Company, by its president, B. E.

Smith, and enters the appearance of the said Railway Company in the above-entitled suit, and, for answer to said bill of complainant, says that said bridge contract and the amendments thereto were entered into by the said Railway Company at the request of its co-defendants, the said The Pittsburgh, Cincinnati and St. Louis Railway Company, and the said Pensylvania Railroad Company, which said companies assumed all the liabil-
286 ities and obligations, and became entitled to all the benefits of said bridge contract, and the said Columbus, Chicago and Indiana Central Railway Company disclaims any interest in said contract or this suit.

C., C. AND I. C. RY. CO..,
By B. E. SMITH, President.
COLUMBUS, CHICAGO AND INDIANA CENTRAL RAILROAD COMPANY,
By B. E. SMITH, President.

Witness:

287 THEODORE GILMAN.

288

And thereupon, on the 13th day of April, A. D. 1882, there was filed in said cause certain answers of the P., C. and St. L. Ry. Co. and P. R. R. Co., which said answers are in the words and figures following, to wit:

STATE OF ILLINOIS, } ss.:
Cook County. }

IN THE CIRCUIT COURT THEREOF.

290

THE KEOKUK AND HAMILTON BRIDGE COMPANY.

vs.

THE PITTSBURGH, CINCINNATI AND ST. LOUIS RAILWAY COMPANY, THE PENNSYLVANIA RAILROAD COMPANY, and THE COLUMBUS, CHICAGO AND INDIANA CENTRAL RAILWAY COMPANY. 291

The separate answer of the Pittsburgh, Cincinnati and St. Louis Railway Company, defendant herein, to the bill and amended bill of the said Keokuk and Hamilton Bridge Company, complainant.

This defendant, now and at all times hereafter saving and reserving unto itself all benefit and advantage that 292 may be had or taken by reason of the manifold errors and insufficiencies in said bill and amended bill contained, for answer thereunto or unto so much thereof as this defendant is advised is or are material to be answered unto, answering, says:

That this defendant denies that the said pretended agreement, dated January 19, 1869, and the amendments thereto between the Toledo, Peoria and Wabash Railway Company, as first party; the Des Moines Valley Railroad Company, as second party; the Columbus,

Chicago and Indiana Central Railway Company, as third party; the Toledo, Wabash and Western Railway Company, as fourth party, and the Keokuk and Hamilton Bridge Company, the complainant herein, as fifth party, was executed by the Columbus, Chicago and Indiana Central Railway Company, one of the defendants herein, at or by the request of this defendant, as alleged in the complainant's bill; but, on the contrary,
294 this defendant alleges and charges the fact to be that if any request was made of B. E. Smith as president of the said defendant Columbus, Chicago and Indiana Central Railway Companyin that behalf by any person whomsoever, such request was without proper or lawful authority from this defendant, so to do and that the pretended acts, as alleged in said bill in that regard, were not the acts of this defendant, but solely the individual act or acts of the person or persons, respectively, who performed them, and as to this defend-
295 ant the same are null and void.

And this defendant, further answering, says: That the lease referred to in complainant's bill, dated January 22, 1869, and the amended lease and contract, dated February 1st, 1870, were entered into between the Columbus, Chicago and Indiana Central Railway Company, this defendant, and the Pennsylvania Railroad Company, defendant herein, whereby the Columbus, Chicago and Indiana Central Railway Company undertook to demise and lease a line of railroad extend-
296 ing from Columbus, in the State of Ohio, to Indianapolis, in the State of Indiana, and to Chicago, in the State of Illinois, with the appurtenances and equipments thereof, unto this defendant, with a reservation to the said lessor of a certain rental payable as therein provided, and with certain covenants and stipulations on the part of the lessee. But this defendant denies that article ninth of said lease of January 22, 1869, imposes upon this defendant any liability whatever as connected with the said alleged agreement of January 19th, 1869, made with the complainant herein, and de-

nies that the said agreement with the said complainant, or the modifications thereof, or amendments thereto, were named or referred to in said lease dated January 22, 1869, or that they have been assigned to this defendant.

And this defendant denies that the alleged acts of any person, in writing or otherwise, prior or subsequent to the execution of said lease by this defendant, has made said agreement dated January 19th, 1869, or 298
the modifications thereof, or amendments thereto, or any of them, a part of said lease, or binding in any manner whatsoever, upon this defendant; on the contrary, this defendant charges the fact to be that the said agreement of lease having been so executed no corporation, person, or persons have been empowered by the stockholders or board of directors of this defendant, or otherwise, to change, enlarge or modify the conditions or terms thereof, and that the same have not been enlarged, modified, or varied, except only by the 299
provisions of the amendment of said lease dated February 10, 1870; that no additional consideration moved to this defendant for the pretended assumption of the additional burden sought to be charged against it by the bill of the complainant herein, in connection with the said alleged bridge contract and amendments thereto, and that as to this defendant the said alleged contracts and amendments thereto are wholly without consideration and void.

This defendant, further answering, says that although 300
about the time of the said contract of lease of January 22, 1869, it did enter possession of the line of railroad of the said Columbus, Chicago and Indiana Central Railway Company, its appurtenances and equipment, and did continue in possession thereof until the 1st day of January, 1875, yet this defendant avers that since the first day of January, 1875, this defendant has not reremained in possession of the said railroad, its appurtenances and equipments, under and in pursuance of the said original lease and amended lease and contract.

301 *Exhibit No. 1—Exhibit H.*

but, on the contrary, says that in pursuance of notice given as early as October 27th, 1874 (a copy whereof is hereto attached, marked "Exhibit A"), this defendant since said first day of January, 1875, has held possession of said lines of railroad merely for the protection and preservation of the said property, and for the account and benefit of the said owners thereof, free and clear from all obligations alleged to arise under the
302 said original and amended lease and contract, and subject to the orders of the United States Circuit Court for the district of Indiana in a cause pending in said Court instituted by this defendant against the said Columbus, Chicago and Indiana Central Railway in pursuance of the said notice of October 27, 1874, this defendant claiming in said Court that said lease was originally invalid, but that in consequence of the matters and things alleged in the bill filed in said suit, and of the said notice, even if the said original and amended lease
303 and contract ever had any legal and binding force and effect, the same had been annulled, canceled, and set aside by this defendant upon the default of the said Columbus, Chicago and Indiana Central Railway Company in the performance of the stipulations, covenants, and conditions thereof on its part first to be fulfilled and performed; all of which is more fully and at large set out in the records and proceedings in the said United States Circuit Court, to which this defendant begs leave to refer, and which are so voluminous that
304 it is impracticable to attach them hereto as exhibits.

And this defendant further avers that the said suit in which the validity of the said lease is involved, both by reason of its original defects and because of the non-performance of essential covenants by the lessor, is still pending and undecided between the parties thereto in the Supreme Court of the United States.

This defendant further avers that, in pursuance of orders of the said United States Circuit Court for the District of Indiana, this defendant has, since January 1st, 1875, paid into the National Bank of Commerce of

New York, to the credit of James A. Roosevelt and William R. Fosdick, receivers appointed by the said court to receive the same, the amount of the net earnings of the said Columbus, Chicago and Indiana Central Railway, and is still continuing, in pursuance of said orders, to make such payment, and that the said sums so paid in pursuance of the said orders are the only amounts paid by this defendant in respect of the use of the said railroad and other premises described 306
in the said lease and contract and amended lease and contract from the 1st day of October, 1874, up to the present time, or for any part thereof, and constitute the full amounts thereof, for which this defendant admits any liability; and that, as the same are paid by this defendant in pursuance of the said notice and litigation and orders of court, it denies that it or the said defendant Pennsylvania Railroad Company, or either of them, are in any manner responsible under any alleged liability arising out of the said lease, or amended 307
lease, or the said alleged contracts with the said bridge company, complainant herein.

This defendant, further answering, says that on the said 19th day of January, 1869, the date of said alleged bridge agreement, or prior or subsequent thereto, it possessed no power or authority under the laws creating it to build or maintain in perpetuity a bridge over the Mississippi River at or near Keokuk, in the State of Iowa, or to enter into any contract, obligation or guarantee with the complainant herein, 308
or any other person or corporation, to build or maintain in perpetuity such a structure removed from the terminus of its railway a distance of many hundred miles, or to guarantee in perpetuity with or to the complainant herein, or any other corporation or person, that the revenues of the complainant herein should, with respect to such bridge, or the traffic upon or over the same, amount to any specified sum at any period whatever.

Without this, this defendant says there is nothing in

said bill and amended bill contained material for it to make further answer unto, and it prays to be dismissed hence, with its reasonable costs in this behalf wrongfully sustained.

THE PITTSBURGH, CINCINNATI AND ST. LOUIS RAILWAY COMPANY.

[SEAL P., C. & St. L. Ry. Co.]

W. THAW,
Vice-President.

STATE OF PENNSYLVANIA, }
County of Allegheny, } ss.:

W. THAW, being duly sworn according to law, says he is the Second Vice-President of the Pittsburgh, Cincinnati and St. Louis Railway Company, one of the defendants in the above-named bill and amended bill; that the averments contained in its foregoing answer, so far as the same are within his own knowledge, are true, and so far as the same are stated upon information, he verily believes them to be true; and that the seal affixed thereto is the corporate seal of the said defendant, and has been so affixed in verification of its said answer.

W. THAW.

Sworn and subscribed before me this 11th day of April, 1882.

Witness my hand and official seal.

[SEAL.]

W. C. BOYLE,
Notary Public.

WILLARD & DRIGGS,
Solicitors P., C. & St. L. Ry. Co.

Exhibit No. 1—Exhibit H (Exh. A). 313

EXHIBIT A to the foregoing amended answer:

NOTICE OF OCTORER 27, 1874.

" PITTSBURGH, CINCINNATI AND ST. LOUIS
" RAILWAY COMPANY,
" OFFICE OF THE VICE-PRESIDENT,
" PITTSBURGH, October 27, 1874.

" To B. E. SMITH, ESQ., President of the Columbus, 314
Chicago and Indiana Central Railway Company:

" Whereas the indenture of lease between the Columbus, Chicago and Indiana Central Railway Company, lessor, and The Pittsburgh, Cincinnati and St. Louis Railway Company, lessee, dated the 22d day of January, 1869, was amended by a supplemental agreement between the same parties dated the 1st day of February, 1870, whereby the Columbus, Chicago and Indiana Central Railway Company agreed and undertook to arrange, provide for, adjust and classify all 315
their indebtedness existing on the 1st day of February, 1870, so that $15,821,000 thereof should be represented by bonds bearing seven per cent. interest, secured by mortgage upon the estate and property of the said Columbus, Chicago and Indiana Central Railway Company, and that all other indebtedness of said Columbus, Chicago and Indiana Central Railway Company and all payments or advances theretofore made on or for interest, construction, operating and maintaining said road, 316
accounts and expenditures made by the Pittsburgh, Cincinnati and St. Louis Railway Company in excess of the receipts theretofore derived from the business and transportation on and over the road of the Columbus, Chicago and Indiana Central Railway Company should be represented by a bond bearing seven per cent. interest, entitling the holder to vote, secured by a mortgage upon the estate and property of said Columbus, Chicago and Indiana Central Railway Company, and to be convertible into preferred capital stock bear-

ing seven per cent. interest at par at any time within fifteen years and the option of the holders of the same, which issue of bonds was not to exceed $10,000,000, and was to be received by the Pittsburgh, Cincinnati and St. Louis Railway Company at par, in payment of their claims and advances, as required by said lease;

"And whereas, on the 28th day of April, 1870, the Columbus, Chicago and Indiana Central Railway Com-
318 pany, by authority of their Board of Directors and stockholders, executed an indenture of mortgage or deed of trust to Archibald Parkhurst and John B. Thompson, trustees, to secure an issue of convertible income bonds not exceeding $10,000,000, to be used and applied so as to make the bonded debt other than the said income bonds of the Columbus, Chicago and Indiana Central Railway Company conform to their said agreement of February 1, 1870, by which said bonded debt was to be reduced to $15,821,000, and as was
319 required by and in performance of the terms of said supplemental agreement;

"And whereas four years and nine months have elapsed since the date of said supplemental agreement, yet the Columbus, Chicago and Indiana Central Railway Company has not complied with the covenants in said agreement, and by reason thereof suits have been instituted against them by holders of certain of their obligations prior in date to the date of the original agreement, namely, the 22d day of January, 1869, and
320 a decree having been rendered by the Circuit Court of the United States for the District of Indiana for the sale of a part of the demised premises, twenty-seven miles of road lying between Richmond and Newcastle, for an unpaid debt of $932,500.44, whereby the Pittsburgh, Cincinnati and St. Louis Railway Company, as lessees, are in imminent risk of being ousted from the possession of the said property, and of having legal proceedings instituted against them for an accounting of the rents, issues and profits derived by their operation and management of the line of railway of the

Columbus, Chicago and Indiana Central Railway Company, or portions thereof;

"And whereas, the duties of the Pittsburgh, Cincinnati and St. Louis Railway Company, while they remain in possession of the said property derived from the Columbus, Chicago and Indiana Central Railway Company, as well as their obligations to the public as common carriers over the line of said road to provide safe roadway and equipment, and proper facilities 322
for the transaction of public business, have heretofore required, and will continue to require, large expenditures of money by the Pittsburgh, Cincinnati and St. Louis Railway Company, all of which said money, already amounting to more than three million of dollars, is jeopardized and endangered by reason of the default of the Columbus, Chicago and Indiana Central Railway Company in not complying with the terms of their said agreement;

"Now, therefore, you are hereby notified that unless 323
your company, namely, the Columbus, Chicago and Indiana Central Railway Company, shall, on or before the 1st day of January, 1875, carry out and fulfill in good faith your said covenant and agreement, as set forth in said amended lease, dated the 1st day of February, 1870, this company, namely, the Pittsburgh, Cincinnati and St. Louis Railway Company, will institute proceedings to compel the specific performance of the agreement dated the 22d day of January, 1869, and the agreement supplemental thereto, dated the 1st day of 324
February, 1870, and, in their alternative, such relief as they may be entitled to in equity.

"For the Pittsburgh, Cincinnati and St. Louis Railway Company.

"WM. THAW,
"Vice President."

325 *Exhibit No. 1—Exhibit H.*

STATE OF ILLINOIS, }
Cook County, } ss.:

IN THE CIRCUIT COURT THEREOF.

THE KEOKUK AND HAMILTON BRIDGE CO.

326 vs.

THE PITTSBURGH, CINCINNATI AND ST. LOUIS RAILWAY COMPANY, the PENNSYLVANIA RAILROAD COMPANY, and THE COLUMBUS, CHICAGO AND INDIANA CENTRAL RAILWAY CO.

The separate answer of the said defendant, The
327 Pennsylvania Railroad Company, to the bill and the amended bill of the said Keokuk and Hamilton Bridge Company, complainant.

This defendant, now and at all times hereafter, saving and reserving unto itself all benefit and advantage that may be had or taken by reason of the manifold errors and insufficiencies in said bill and amended bill contained, for answer thereunto or unto so much and such parts thereof as this defendant is advised is, or are material to be answered unto, answering, says:

328 That whether the agreement dated January 19th, 1869, recited in said bill, was or was not entered between the Toledo, Peoria and Warsaw Railroad Company, the Des Moines Valley Railroad Company, the Columbus, Chicago and Indiana Central Railway Company, the Toledo, Wabash and Western Railroad Company and the complainant herein, for the construction across the Mississippi River at Keokuk, Iowa, of a bridge as therein set out, this defendant is not informed, and therefore does not admit the existence of such agreement; but if it be material to the cause of the

complainant, it is left to the proof thereof. This defendant, further answering, says that if the alleged agreement, bearing date January 19th, 1869, was executed as averred in complainant's bill and amended bill, this defendant denies that it was executed by B. E. Smith as president of the Columbus, Chicago and Indiana Central Railway Company, one of the defendants herein, at or by the request of this defendant, as alleged in the complainant's bill; but, on the contrary, 330
this defendant alleges and charges the fact to be that if any request was made to B. E. Smith, as president of the said Columbus, Chicago and Indiana Central Railway Company in that behalf by any person whomsoever, such request was without proper or lawful authority from this defendant so to do. This defendant has not knowledge as to whether the alleged correspondence set out in complainant's bill on pages 7 and 8, with B. E. Smith as president of the Columbus, Chicago and Indiana Central Railway Company really did take 331
place, and therefore denies the same and leaves the complainant to the proof thereof, but avers that if such pretended acts as alleged in said bill in that regard were done, they were not the acts of this defendant, but solely the act or acts of the person or persons who may have performed them, and that as to this defendant the same are null and void.

The said defendant, further answering, says that the lease referred to in complainant's bill, dated January 22d, 1869, and the amended lease and contract dated 332
February 1st, 1870, were entered into between the Columbus, Chicago and Indiana Central Railway Company, the Pittsburgh, Cincinnati and St. Louis Railway Company and this defendant, whereby the said Columbus, Chicago and Indiana Central Railway Company undertook to demise and lease a line of road extending from Columbus, in the State of Ohio, to Indianapolis, in the State of Indiana, to Chicago, in the State of Illinois, with the appurtenances and equipment thereof, unto the said Pittsburgh, Cincinnati and St.

Louis Railway Company, with the reservation to the said lessor of a certain rental payable as therein provided, and with certain covenants and stipulations on the part of the lessee, the payment of which rental and the performance of which covenants and stipulations by the said lessee were guaranteed by this defendant; but this defendant denies that article ninth of said lease of January 22d, 1869, impose upon the said lessee, or upon this defendant as guarantor, any liability whatever as connected with the said alleged agreement of January 19th, 1869, made with the complainant herein, and denies that the said agreement with the said complainant, or the modifications thereof or amendments thereto, were named or referred to in said lease, dated January 22d, 1869, or that they have been assigned to the said Pittsburgh, Cincinnati and St. Louis Railway Company; and this defendant denies that the alleged acts of any person, in writing or otherwise, prior or subsequent to the execution of said guarantee by this defendant, has made said agreement, dated January 19th, 1869, or the modifications thereof or amendments thereto, or any of them, a part of said lease, or binding in any manner upon this defendant; on the contrary, this defendant charges the fact to be that, the said agreement of lease having been so executed, no corporation, person or persons, have been empowered by the stockholders or Board of Directors of this defendant or otherwise to change, enlarge, or modify the conditions or terms thereof, and that the same have not been enlarged, modified or varied, except only by the provisions of the amendment of said lease, dated February 1st, 1870; that no additional consideration moved to this defendant for the pretended assumption of the additional burden sought to be charged against it as guarantor by the complainant's bill in connection with the said alleged bridge contract and amendments thereto, and that as to this defendant the said alleged contract and amendments thereto are wholly without consideration and void.

This defendant, further answering, says that although about the time of the said contract of lease of January 22d, 1869, the said Pittsburgh, Cincinnati and St. Louis Railway Company did enter into possession of the line of railroad of the said Columbus, Chicago and Indiana Central Railway Company, its appurtenances and equipment, and did continue in possession thereof until the 1st day of January, in the year 1875, yet this defendant avers that since the 1st day of January, 1875, 338
the Pittsburgh, Cincinnati and St. Louis Railway Company has not remained in possession of the said railroad, its appurtenances and equipment, under and in pursuance of the said original and amended lease and contract; but, on the contrary, says that, in pursuance of notice given as early as October 27th, 1874 (a copy whereof is hereto attached, marked "Exhibit A"), the said Pittsburgh, Cincinnati and St. Louis Railway Company, since said 1st of January, 1875, has held possession of said lines of railroad merely for the protection 339
and preservation of the said property and for the account and benefit of the said owners thereof, free and clear from all obligations alleged to arise under the said original and amended lease and contract, and subject to the orders of the United States Circuit Court for the District of Indiana in a case pending in said Court instituted by the said Pittsburgh, Cincinnati and St. Louis Railway Company against the said Columbus, Chicago and Indiana Central Railway Company, in pursuance of the said notice of October 27th, 1874, the 340
said Pittsburgh, Cincinnati and St. Louis Railway Company, of which this defendant is the guarantor, claiming in said Court that said lease was originally invalid, but that, in consequence of the matters and things alleged in the bill filed in said suit, and of the said notice, even if the said original and amended lease and contract ever had any legal and binding force and effect, it had been annulled, canceled and set aside by the said Pittsburgh, Cincinnati and St. Louis Railway Company upon the default of the Columbus, Chicago and

341 *Exhibit No. 1—Exhibit H.*

Indiana Central Railway Company in the performance of the stipulations, covenants, and conditions thereof on its part first to be fulfilled and performed—all of which is more fully and at large set out in the records and proceedings in the United States Circuit Court, to which this defendant begs leave to refer, and which are so voluminous that it is impracticable to attach them hereto as exhibits.

342 And this defendant further avers that the said suit, in which the validity of said lease is involved, both by reason of its original defects and because of the non-performance of essential covenants by the lessor, is still pending and undecided between the parties thereto, in the Supreme Court of the United States.

This defendant further avers that, in pursuance of orders of the said United States Circuit Court for the District of Indiana, the Pittsburgh, Cincinnati and St. Louis Railway Company has, since January 1st, 1875, paid into
343 the National Bank of Commerce of New York, to the credit of James A. Roosevelt and William R. Fosdick, Receivers appointed by the said Court to receive the same, the amounts of the net earnings of the said Columbus, Chicago and Indiana Central Railway, and is still continuing, in pursuance of said order, to make such payments, and that the said sums so paid in pursuance of the said orders are the only amounts paid by the said Pittsburgh, Cincinnati and St. Louis Railway Company in respect of the use of the said railroad and other
344 premises described in the said lease and contract, and amended lease and contract, from the 1st day of October, 1874, up to the present time, or for any part thereof, and constitute the full amounts thereof for which the said Pittsburgh, Cincinnati and St. Louis Railway Company admits any liability; and that as the same are paid by the Pittsburgh, Cincinnati and St. Louis Railway Company in pursuance of the said notice and litigation and orders of Court, this defendant denies that it is in any manner responsible under any alleged liability arising out of the said lease or amended lease,

or the said alleged contract with the said bridge company, complainant herein.

This defendant, further answering, says that on the 19th day of January, 1869, the date of said alleged bridge agreement, or prior or subsequent thereto, it possessed no power or authority, under the laws creating it, to build or maintain in perpetuity a bridge over the Mississippi River at or near Keokuk, in the State of Iowa, or to enter into any contract, obligation or guarantee with the complainant herein, or any other person or corporation, to build or maintain in perpetuity such a structure removed from the terminus of its railroad a distance of many hundred miles, or to guarantee in perpetuity with or to the complainant herein, or any other corporation or person, that the revenues of the complainant herein should, with respect to such bridge or the traffic upon or over the same, amount to any specified sum at any period whatever. 346

Without this, this defendant says there is nothing in said bill and amended bill contained material for it to make further answer unto, and it prays to be dismissed hence with its reasonable costs in this behalf wrongfully sustained. 347

[Seal P. R. R. C.]

THE PENNSYLVANIA RAILROAD COMPANY.
G. B. ROBERTS,
President.

Attest:
JNO. C. SIMS, JR., 348
Secretary.

WILLARD & DRIGGS,
Solicitors for P. R. R. Co

STATE OF PENNSYLVANIA, } ss.:
City of Philadelphia, }

GEORGE B. ROBERTS, being duly sworn according to law, says he is the president of the Pennsylvanis Rail-

road Company, one of the defendants in the above-named bill and amended bill; that the averments contained in its foregoing answer, so far as the same are within his own knowledge, are true, and so far as the same are stated upon information, he verily believes them to be true, and that the seal affixed thereto is the corporate seal of the said defendant, and has been so affixed in verification of its said answer.

350 G. B. ROBERTS.

Sworn and subscribed before me this 6th day of April, A. D. 1882.

Witness my hand and official seal.

[SEAL.] JNO. C. SIMS, JR.,
Notary Public.

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Exhibit No. 1—Exhibit H (Exh. A). 353

EXHIBIT A to the foregoing amended answer.

NOTICE OF OCTOBER 27, 1874.

"PITTSBURGH, CINCINNATI AND ST. LOUIS RAILWAY CO.,
"OFFICE OF THE VICE-PRESIDENT,
"PITTSBURGH, October 27, 1874.

"To B. E. SMITH, ESQ., President of the Columbus, Chicago and Indiana Central Railway Company: 354

"Whereas the indenture of lease between the Columbus, Chicago and Indiana Central Railway Company, lessor, and the Pittsburgh, Cincinnati and St. Louis Railway Company, lessee, dated the 22d day of January, 1869, was amended by a supplemental agreement between the same parties, dated the 1st day of February, 1870, whereby the Columbus, Chicago and Indiana Central Railway Company agreed and undertook to 355 arrange, provide for, adjust and classify all their indebtedness existing on the 1st day of February, 1870, so that $15,821,000 thereof should be represented by bonds bearing seven per cent. interest, secured by mortgage upon the estate and property of the said Columbus, Chicago and Indiana Central Railway Company, and that all other indebtdeness of said Columbus, Chicago and Indiana Central Railway Company, and all payments or advances theretofore made on or for interest, construction, operating and maintaining said roads, accounts 356 and expenditures made by the Pittsburgh, Cincinnati and St. Louis Railway Company in excess of the receipts theretofore derived from the business and transportation on and over the road of the Columbus, Chicago and Indiana Central Railway Company should be represented by a bond bearing seven per cent. interest, entitling the holder to vote, secured by a mortgage upon the estate and property of said Columbus, Chicago and Indiana Central Railway Company, and to be convertible into preferred capital stock, bearing seven per cent. in-

terest, at par, at any time within fifteen years, at the option of the holders of the same, which issue of bonds was not to exceed $10,000,000, and was to be received by the Pittsburgh, Cincinnati and St. Louis Railway Company at par, in payment of their claims and advances as required by said lease;

"And whereas, on the 28th day of April, 1870, the Columbus, Chicago and Indiana Central Railway Com-
358 pany, by authority of their board of directors and stockholders, executed an indenture of mortgage or deed of trust to Archibald Parkhurst and John B. Thompson, trustees, to secure an issue of convertible income bonds, not exceeding $10,000,000, to be used and applied so as to make the bonded debt, other than the said income bonds of the Columbus, Chicago and Indiana Central Railway Company, conform to their said agreement of February 1, 1870, by which said bonded debt was to be reduced to $15,821,000, and as
359 was required by and in performance of the terms of said supplemental agreement;

"And whereas four years and nine months have elapsed since the date of said supplemental agreement, yet the Columbus, Chicago and Indiana Central Railway Company has not complied with the covenants in said agreement, and by reason thereof suits have been instituted against them by holders of certain of their obligations prior in date to the date of the original agreement, namely, the 22d day of January, 1869, and a
360 decree having been rendered by the Circuit Court of the United States for the district of Indiana, for the sale of a part of the demised premises, twenty-seven miles of road lying between Richmond and Newcastle, for an unpaid debt of $932,500.44, whereby the Pittsburgh, Cincinnati and St. Louis Railway Company, as lessees, are in imminent risk of being ousted from the possession of the said property, and of having legal proceedings instituted against them for an accounting of the rents, issues and profits derived by their operation and management of the line of railway of the Co-

lumbus, Chicago and Indiana Central Railway Company, or portions thereof;

"And whereas the duties of the Pittsburgh, Cincinnati and St. Louis Railway Company, while they remain in possession of the said property derived from the Columbus, Chicago and Indiana Central Railroad Company, as well as their obligations to the public as common carriers over the line of said road, to provide safe roadway and equipment, and proper facilities for the 362
transaction of public business, have heretofore required, and will continue to require, large expenditures of money by the Pittsburgh, Cincinnati and St. Louis Railway Company, all of which said money, already amounting to more than three million of dollars, is jeopardized and endangered by reason of the default of the Columbus, Chicago and Indiana Central Railway Company in not complying with the terms of their said agreement:

"Now, therefore, you are hereby notified that unless your company, namely, the Columbus, Chicago and 363
Indiana Central Railway Company, shall, on or before the 1st day of January, 1875, carry out and fulfill in good faith your said covenant and agreement, as set forth in said amended lease, dated the 1st day of February, 1870, this company, namely, the Pittsburgh, Cincinnati and St. Louis Railway Company, will institute proceedings to compel the specific performance of the agreement dated the 22d day of January, 1869, and the agreement supplemental thereto, dated the 1st day of February, 1870, and in the alternative such re- 364
lief as they may be entitled to in equity.

"For the Pittsburgh, Cincinnati and St. Louis Railway Company.

"WM. THAW,
"Vice-President."

365 *Exhibit No. 1—Exhibit H.*

And thereupon, on the 13th day of April, A. D. 1882, there was filed in the said cause certain petitions and bond for removal of said suit into the U. S. Circuit Court, and a certain order was made and entered of record, which petitions, bonds and order are in the words and figures following, to wit :

Petition for Removal by Non-resident.

366 STATE OF ILLINOIS, } ss. :
County of Cook, }

IN THE CIRCUIT COURT OF COOK COUNTY.

KEOKUK AND HAMILTON BRIDGE COMPANY

vs.

367 PITTSBURGH, CINCINNATI AND ST. LOUIS RAILWAY COMPANY, PENNSYLVANIA RAILROAD COMPANY, and COLUMBUS, CHICAGO AND INDIANA CENTRAL RAILWAY COMPANY.

TO THE HONORABLE THE CIRCUIT COURT OF COOK COUNTY, STATE OF ILLINOIS :

368 Your petitioner respectfully shows that the matter and amount involved in the above-entitled cause exceeds, exclusive of costs, the sum or value of five hundred dollars.

Your petitioner further shows that the controversy in said suit is between citizens of different States, and that the petitioner was, at the time of the commencement of this suit, and still is, a citizen of the State of Pennsylvania, and that the said complainant The Keokuk and Hamilton Bridge Company was then, and still is, a citizen of the State of Illinois, and the said

defendant The Pittsburgh, Cincinnati and St. Louis Railway Company, was then, and still is, citizens of the State of Ohio, and that the said defendant The Columbus, Chicago, and Indiana Central Railway Company was then, and still is, a citizen of the State of Indiana.

Your petitioner states that in said suit above mentioned there is a controversy which is wholly between citizens of different States, and which can be fully determined as between them, to wit, a controversy between 370 the said petitioner and the said Keokuk and Hamilton Bridge Company.

And your petitioner offers herewith a bond, with good and sufficient surety, in the penal sum of five hundred dollars, conditioned for his entering in the Circuit Court of the United States for the Northern District of Illinois, on the first day of its next session, a copy of the record in this suit, and for paying all costs that may be awarded in said Circuit Court if said Court shall hold that this suit was wrongfully or im- 371 properly removed thereto.

Your petitioner therefore prays this Honorable Court to proceed no further herein, except to make the order of removal required by law, and to accept the said surety and bond, and to cause the record herein to be removed into said Circuit Court of the United States within and for the Northern District of Illinois, according to the statute in such case made and provided.

And your petitioners will ever pray, &c.

PENNSYLVANIA RAILROAD COMPANY, 372
By GEORGE DRIGGS,
Solicitor.

WILLARD & DRIGGS,
Solicitors for Petitioner.

STATE OF ILLINOIS, }
Cook County, } ss.:

GEORGE DRIGGS, being duly sworn, on oath deposes and says that he is one one of the attorneys of the

373 *Exhibit No. 1—Exhibit H.*

Pennsylvania Railroad Company, defendant in the above-entitled cause, and is duly authorized in the premises; that he has read the foregoing petition and knows the contents thereof, and that the matters and things therein stated are true, as he verily believes.

GEORGE DRIGGS.

Subscribed and sworn to by said George Driggs this 13th day of April, A. D. 1882, before me.

374 JACOB GROSS,
Clerk.

Petition for Removal by Non-resident.

STATE OF ILLINOIS, County of Cook, } ss.:

IN THE CIRCUIT COURT OF COOK COUNTY.

375

KEOKUK AND HAMILTON BRIDGE COMPANY

vs.

PITTSBURGH, CINCINNATI AND ST. LOUIS RAILWAY COMPANY, PENNSYLVANIA RAILROAD COMPANY, and COLUMBUS, CHICAGO AND INDIANA CENTRAL
376 RAILWAY COMPANY.

TO THE HONORABLE THE CIRCUIT COURT OF COOK COUNTY, STATE OF ILLINOIS:

Your petitioner respectfully shows that the matter and amount involved in the above-entitled cause exceeds, exclusive of costs, the sum or value of five hundred dollars.

Your petitioner further shows that the controversy in said suit is between citizens of different States, and

that the petitioner was at the time of the commencement of this suit, and still is, a citizen of the State of Ohio, and that the said complainant The Keokuk and Hamilton Bridge Company was then, and still is, a citizen of the State of Illinois, and that the said defendant Pennsylvania Railroad Company was then, and still is, a citizen of the State of Pennsylvania, and that the said defendant The Columbus, Chicago and Indiana Central Railway Company was then, and still is, a citi- 378
zen of the State of Indiana.

Your petitioner states that in said suit above mentioned there is a controversy which is wholly between citizens of different States, and which can be fully determined as between them, to wit, a controversy between the said petitioner and the said Keokuk and Hamilton Bridge Company.

And your petitioner offers herewith a bond, with good and sufficient surety, in the penal sum of five hundred dollars, conditioned for his entering in the Circuit 379
Court of the United States for the Northern District of Illinois, on the first day of its next session, a copy of the record in this suit, and for paying all costs that may be awarded by the said Circuit Court, if said Court shall hold that this suit was wrongfully or improperly removed thereto.

Your petitioner therefore prays this Honorable Court to proceed no further herein, except to make the order of removal required by law, and to accept the said surety and bond, and to cause the record herein to be 380
removed into said Circuit Court of the United States within and for the Northern District of Illinois, according to the statute in such case made and provided.

And your petitioner will ever pray, etc.

PITTSBURGH, CINCINNATI AND ST. LOUIS RAILWAY COMPANY.

By GEORGE DRIGGS,
Solicitor.

WILLARD & DRIGGS,
Solicitors for Petitioner.

381 *Exhibit No. 1—Exhibit H.*

STATE OF ILLINOIS, COOK COUNTY:

GEORGE DRIGGS, being duly sworn, on oath deposes and says that he is one of the attorneys of the Pittsburgh, Cincinnati and St. Louis Railway Company, defendant in the above-entitled cause, and is duly authorized in the premises; that he has read the foregoing petition and knows the contents thereof, and that the
382 matters and things therein stated are true, as he verily believes.

GEORGE DRIGGS.

Subscribed and sworn to by said George Driggs this 13th day of April, A. D. 1882, before me.

JACOB GROSS,
Clerk.

BOND.

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Know all men by these presents that we, the Pittsburg, Cincinnati and St. Louis Railway Company, as principal, and George Willard, of Hyde Park, in the County of Cook and State of Illinois, as surety, are held and firmly bound unto the Keokuk and Hamilton Bridge Company in the penal sum of five hundred dollars, lawful money of the United States, for the payment of which, well and truly to be made, we bind ourselves and our heirs, executors or administrators,
384 jointly and severally and firmly by these presents.

Witness our hands and seals this thirteenth day of April, A. D. 1882.

The condition of this obligation is such that if the above-bounden Pittsburg, Cincinnati and St. Louis Railway Company shall enter and file, or cause to be entered and filed, in the next Circuit Court of the United States in and for the Northern District of Illinois, on the first day of its next session, copies of all process, pleadings, depositions, testimony, and other proceedings in a certain suit or action now pending in

the Circuit Court of Cook County, State of Illinois, in which the said Keokuk and Hamilton Bridge Company is plaintiff, and the said Pittsburgh, Cincinnati and St. Louis Railway Company and others are defendants, and shall do such other appropriate acts as by the Act of Congress in that behalf are required to be done upon the removal of such suit from said State Court into the United States Court, then this obligation to be void; otherwise of force. 386

THE PITTSBURGH, CINCINNATI AND ST. LOUIS RAILWAY COMPANY. [SEAL.]
By GEORGE DRIGGS,
Its Attorney.
GEORGE WILLARD. [SEAL.]

BOND.

Know all men by these presents that we, the Pennsylvania Railroad Company, as principal, and George 387 Willard, of Hyde Park, in the County of Cook and State of Illinois, as surety, are held and firmly bound unto the Keokuk and Hamilton Bridge Company in the penal sum of five hundred dollars, lawful money of the United States, for the payment of which, well and truly to be made, we bind ourselves and our heirs, executors or administrators, jointly and severally and firmly by these presents.

Witness our hands and seals this thirteenth day of April, A. D. 1882. 388

The condition of this obligation is such that if the above-bounden Pennsylvania Railroad Company shall enter and file, or cause to be entered and filed, in the next Circuit Court of the United States in and for the Northern District of Illinois, on the first day of its next session, copies of all process, pleadings, depositions, testimony, and other proceedings in a certain suit or action now pending in the Circuit Court of Cook County, State of Illinois, in which the Keokuk and Hamilton Bridge Company is plaintiff,

and the Pennsylvania Railroad Company and others are defendants, and shall do such other appropriate acts as by the Act of Congress in that behalf are required to be done upon the removal of such suit from said State Court into the United States Court, then this obligation to be void; otherwise of force.

[SEAL.] THE PENNSYLVANIA RAILROAD COMPANY,

390 By GEORGE DRIGGS,

Its Attorney.

[SEAL.] GEORGE WILLARD.

Order.

THE KEOKUK AND HAMILTON BRIDGE COMPANY 391 vs. PITTSBURGH, CINCINNATI AND ST. LOUIS RAILWAY COMPANY, THE PENNSYLVANIA RAILROAD COMPANY ET AL.	38699—2541.

On motion of solicitors for the defendants, Pittsburgh, Cincinnati and St. Louis Railway Company, and The 392 Pennsylvania Railroad Company, it is ordered that leave be, and it is hereby, granted the said defendants to file their respective petitions and bonds for the removal of this cause into the United States Circuit Court for the Northern District of Illinois.

On the same day, to wit, on the 7th day of July, 1882, there were filed in said clerk's office, the answers of the P., C. & St. L. Ry. Co. and P. R. R. Co. in said entitled

cause, which said answers are in the words and figures following, to wit:

UNITED STATES OF AMERICA, Northern District of Illinois, } ss.:

IN THE CIRCUIT COURT THEREOF, IN CHANCERY.

394

THE KEOKUK AND HAMILTON BRIDGE COMPANY

vs.

THE PITTSBURGH, CINCINNATI AND ST. LOUIS RAILWAY COMPANY; THE PENNSYLVANIA RAILROAD COMPANY, AND THE COLUMBUS, CHICAGO AND INDIANA CENTRAL RAILWAY COMPANY.

395

The separate and further answer of The Pittsburgh, Cincinnati and St. Louis Railway Company, defendant herein, to the bill and amended bill of the said Keokuk and Hamilton Bridge Company.

This defendant, now and at all times hereafter saving and reserving unto itself all benefit and advantage that may be had or taken by reason of the manifold errors 396 and insufficiencies in said bill and amended bill contained, for answer thereunto, or unto *to* so much thereof as this defendant is advised is or are material to be answered unto, further answering, says:

FIRST. That this defendant admits that a certain instrument of writing, bearing date January 19, 1869, was attempted to be executed by the Toledo, Peoria and Warsaw Railway Company: the Des Moines Valley Railroad Company; the Columbus, Chicago and Indiana

Central Railway Company; the Toledo, Wabash and Western Railway Company, and the Keokuk and Hamilton Bridge Company, the complainant herein, providing, amongst other things, for the construction of a wrought-iron bridge over the Mississippi River, at Keokuk, Iowa, but whether said instrument of writing was in fact executed or entered into as alleged in complainant's bill, this defendant is not informed, and,
398 therefore, does not admit the existence thereof, but, if it is material to the cause of the complainant herein, it is left to the proof thereof; but this defendant never having had the original of said instrument of writing, if one was in fact executed, or the schedule thereto attached, in its possession, it hath not knowledge as to whether the papers attached to the complainant's bill and marked "Exhibit A" are true and complete copies of the said alleged contract and schedule dated January 19, 1869, and therefore does not admit the same as such, but, if
399 it is material to the cause of the complainant herein, it is left to the proof hereof.

SECOND. That this defendant hath not knowledge of the date when the said defendant Columbus, Chicago and Indiana Central Railway Company actually executed said instrument of writing dated January 19, 1869, if it did in fact execute the same, and therefore, for want of knowledge in this regard, it neither admits nor denies that the same was executed by the said defend-
400 ant Columbus, Chicago and Indiana Central Railway Company, some time after the said nineteenth day of January, 1869, but leaves the complainant to the proof thereof as this honorable Court shall direct.

THIRD. That this defendant hath not knowledge whether "Exhibit C," attached to the complaint's bill herein, is a copy of an alleged request dated February 16, 1869, made by T. L. Jewett, president of the Pittsburgh, Cincinnati and St. Louis Railway Company, and J. Edgar Thomson, president of the Pennsylvania Rail-

road Company, addressed to B. E. Smith, president of the Columbus, Chicago and Indiana Central Railway Company; that this defendant hath never had in its possession the original of said request, if, in fact, any such was made; that it hath not now, nor hath it ever had, any record or copy of any such request in its possession, except copies supposed to have been furnished by the complainant herein, and, for want of knowledge in this behalf, it neither admits nor denies that the said 402
"Exhibit C" contains a true copy of the alleged requests, but leaves the complainant to the proof thereof as this honorable Court shall direct.

FOURTH. That this defendant hath not knowledge whether requests were made in the words and figures set out in the compainant's bill by the presidents of the Pittsburgh, Cincinnati and St. Louis Railway Company and the Pennsylvania Railroad Company, respectively, in communications addressed to the president of the 403
Columbus, Chicago and Indiana Central Railway Company to enter into the first and second amendments to said alleged instrument of writing dated January 19, 1869; that this defendant hath never had in its possession the original of said requests, if, in fact, any such were made; that it hath not now, nor hath it ever had, any record or copy of any such requests in its possession, except copies supposed to have been furnished by the complainant herein, and, for want of knowledge in this behalf, it neither admits nor denies that said re- 404
quests as set out in said bill were made as alleged, but leaves the complainant to the proof thereof as this honorable Court shall direct.

FIFTH. This defendant, further answering, says, upon information and belief, that if it is intended in the complainant's bill herein to charge that this defendant, as lessee of the Columbus, Chicago and Indiana Central Railway, or otherwise, has, on account of the pretended agreement of January 19, 1869, or the alleged amend-

ments thereto, received any special benefit respecting the passage of passenger and freight trains and business over said bridge at any time this defendant denies the same; but this defendant, upon information and belief, avers and charges the fact to be that in respect of said bridge in the passage of passenger and freight trains and business over the same no benefit whatever has accrued to it in that regard further or different than has
406 been enjoyed by every other railroad or transportation company doing business with the public in respect of passengers and freight whose selected route or destination required passage over said bridge, and that no passenger or freight train of this defendant, as lessee or otherwise, has passed over said bridge.

SIXTH. This defendant, further answering, says that whether the aggregate net earnings to complainant from railway freight traffic across said bridge and from all
407 other sources, as provided by said pretended agreement dated January 19, 1869, and the alleged amendments thereto, have amounted to the sum of $80,000 in any one year, this defendant hath no other or further knowledge than has been contained in the statements furnished by the complainant herein; that the original books of account respecting the earnings and expenses of said bridge have never been in the possession of this defendant, and, therefore, this defendant does not admit the allegations of the bill herein in this behalf, but if
408 the same are material to the cause of the complainant, it is left to the proof thereof.

SEVENTH. This defendant admits that in accordance with the terms of a document furnished to it by the defendant, Columbus, Chicago and Indiana Central Railway Company, purporting to be a copy of the said pretended agreement of date of January 19, 1869, it advanced and paid to the complainant herein for and on account of said Columbus, Chicago and Indiana Central Railway Company, but not otherwise, various

sums of money, from time to time, which amounted in the aggregate to the sum $35,101.67 on the 1st day of September, 1874.

EIGHTH. That further than the complainant herein hath advised this defendant upon the subject of the net earnings of said bridge, and as to whether the same from freight traffic over said bridge, according to the provisions of said pretended bridge contract and amend- 410
ments, have fallen below the sum of eighty thousand dollars for each and every six months previous to the first day of September and March in each and every year since September 1, 1880, this defendant hath not knowledge, and therefore does not admit the allegation in said bill in this behalf to be true; but, if it be material to the cause of the complainant herein, it is left to the proof thereof; that this defendant admits that it hath made no payments to the complainant herein under the provisions of the said pretended agreement 411
since the first day of September, 1874; that this defendant admits that it hath received from time to time since the first day of September, 1874, from the complainant herein, statements purporting to show certain sums of money as being due, not from this defendant, but as being due from the defendant, Columbus, Chicago and Indiana Central Railway Company, as its alleged proportion of a sum alleged to be required to be paid to the complainant for each six months ending on the 1st day of 412
March and September, respectively, from September 1, 1874, up to and including September 1, 1880; but this defendant says that, believing the said statements represented no valid or legal claim upon it, no examination of said statements has been made for the purpose of verification or otherwise, hence no objection has been made to said statements by this defendant, and no further or other action hath been taken by it respecting the said statements than to file the same in its office.

413 *Exhibit No. 1—Exhibit II.*

NINTH. That this defendant, upon information and belief, admits that a notice was given to the defendant, Pennsylvania Railroad Company, as alleged in said bill.

TENTH. This defendant denies that it hath been in the continuous possession and control of the said Columbus, Chicago and Indiana Central Railway, or has had the benefit of said bridge as alleged in said bill,
414 except as set forth in the answer of this defendant heretofore filed in this cause and as hereinbefore set forth; but this defendant admits that in connection with other railroad lines doing business over the said bridge it has allowed and caused deductions to be made by connecting railroad lines from its rates on through business over its lines and said bridge for certain tolls according to a schedule attached to said pretended bridge contract.

415 ELEVENTH. That this defendant admits, upon information and belief, that there is existing upon the property of the Columbus, Chicago and Indiana Central Railway Company a mortgage antedating the alleged execution of said pretended bridge agreement, which mortgage is in default, and has due on it more than ten millions of dollars and several years of arrears of interest; but this defendant says that proceedings of foreclosure against said mortgage are now pending in this Honorable Court, and until said proceedings and the
416 action pending in the Supreme Court of the United States, referred to in the answer of this defendant heretofore filed in this cause, shall have terminated, any statements as to whether said mortgage is for an amount more than sufficient to exhaust all the property of the said Columbus, Chicago and Indiana Central Railway Company, and any income to be derived from said lease of said company to this defendant, as well as whether said company is insolvent, would be only matters of opinion; therefore this defendant does not admit the allegations of the bill in this regard, but if the same be

material to the cause of the complainant it is left to the proof thereof. This defendant denies that all the property of said Columbus, Chicago and Indiana Central Railway Company is in the hands of this defendant, under and by virtue of the said lease of the said Columbus, Chicago and Indiana Central Railway Company to this defendant, except as stated in its answer heretofore filed in this cause, the allegations in which answer this defendant intended should be taken as an averment in 418
this cause; that the said lease was originally invalid for the reasons specifically set out and contained in the bill and amended bill filed in the proceedings referred to in said answer.

Without this, this defendant says there is nothing in said bill and amended bill contained material for it to make further answer unto, and it prays to be dismissed hence, with its reasonable costs in this behalf wrongfully sustained.

THE PITTSBURGH, CINCINNATI AND ST. 419
LOUIS RAILWAY COMPANY,

By

THOS. D. MESSLER,
Vice-president.

Attest: [SEAL.]
S. B. LIGGETT,
Secretary.

420

STATE OF PENNSYLVANIA, }
County of Allegheny, } ss.:

THOMAS D. MESSLER, being duly sworn according to law, says he is the vice-president of the Pittsburgh, Cincinnati and St. Louis Railway Company, one of the defendants in the above-named bill and amended bill; that the averments contained in its foregoing answer, so far as the same are within his own knowledge, are true, and so far as the same are stated upon information he verily believes them to be true, and that the

421 *Exhibit No. 1—Exhibit H.*

seal affixed thereto is the corporate seal of the said defendant, and has been so affixed in verification of its said answer.

THOS. D. MESSLER.

Sworn and subscribed before me this 11th day of September, A. D. 1882.

Witness my hand and official seal:

[SEAL.] W. C. BOYLE,

422 Notary Public.

WILLARD & DRIGGS,

Solicitors for Defendant P., C. & St. L. Ry. Co.

R. BIDDLE ROBERTS,

Of Counsel.

Endorsed: Filed Sept. 16, 1882. Wm. H. Bradley, Clerk.

423

424

Exhibit No. 1—Exhibit H. 425

UNITED STATES OF AMERICA,
Northern District of Illinois, } ss.:

IN THE CIRCUIT COURT THEREOF.

IN CHANCERY.

THE KEOKUK AND HAMILTON BRIDGE COMPANY 426

vs.

THE PITTSBURGH, CINCINNATI AND ST. LOUIS RAILWAY COMPANY, THE PENNSYLVANIA RAILROAD COMPANY, and THE COLUMBUS, CHICAGO AND INDIANA CENTRAL RAILWAY COMPANY. 427

The separate and further answer of the Pennsylvania Railroad Company, defendant herein, to the bill and amended bill of the said Keokuk and Hamilton Bridge Company.

This defendant, now and at all times hereafter, saving and reserving unto itself all benefit and advantage that may be had or taken by reason of the manifold errors and insufficiencies in said bill and amended bill 428
contained, for answer thereunto, or unto *to* so much thereof as this defendant is advised is or are material to be answered unto, further answering, says:

That this defendant hath not knowledge of the date when the said defendant Columbus, Chicago and Indiana Central Railway Company actually executed said instrument of writing, dated January 19, 1869, if it did in fact execute the same, and therefore, for want of knowledge in this regard, it neither admits nor denies that the same was executed by the said defendant Col-

umbus, Chicago and Indiana Central Railway Company some time after the said nineteenth day of January, 1869, but leaves the complaint to the proof thereof as this Honorable Court shall direct.

That this defendant hath not knowledge whether "Exhibit C," attached to the complainant's bill herein, is a copy of an alleged request, dated February 16, 1860, made by T. L. Jewett, President of the Pitts-
430 burgh, Cincinnati and St. Louis Railway Company, and J. Edgar Thomson, President of the Pennsylvania Railroad Company, addressed to B. E. Smith, President of the Columbus, Chicago and Indiana Central Railway Company; that this defendant hath never had in its possession the original of said request, if, in fact, any such was made; that it hath not now, nor hath it ever had, any record or copy of any such request in its possession, except copies supposed to have been furnished by the complainant herein, and, for want of
431 knowledge in this behalf, it neither admits nor denies that the said "Exhibit C" contains a true copy of the alleged requests, but leaves the complainant to the proof thereof as this Honorable Court shall direct.

That this defendant hath not knowledge whether requests were made in the words and figures set out in the complainant's bill by the Presidents of the Pittsburgh, Cincinnati and St. Louis Railway Company and the Pennsylvania Railroad Company, respectively, in communications addressed to the President of the Col-
432 umbus, Chicago and Indiana Central Railway Company, to enter into the first and second amendments to said alleged instrument of writing, dated January 19, 1869; that this defendant hath never had in its possession the original of said requests, if, in fact, any such were made; that it hath not now, nor hath it ever had, any record or copy of any such requests in its possession, except copies supposed to have been furnished by the complainant herein, and for want of knowledge in this behalf it neither admits or denies that said requests, as set out in said bill, were made as alleged, but

leaves the complainant to the proof thereof, as this Honorable Court shall direct.

This defendant admits the receipt from the complainant herein of a notice dated May 6, 1881, alleging a default on the part of the Pittsburgh, Cincinnati and St. Louis Railway Company, as stated in the complainant's bill.

That this defendant admits, upon information and belief, that there is existing upon the property of the 434
Columbus, Chicago and Indiana Central Railway Company a mortgage antedating the alleged execution of said pretended bridge agreement, which mortgage is in default, and has due on it more than ten millions of dollars and several years of arrears of interest; but this defendant says that proceedings of foreclosure against said mortgage are now pending in this Honorable Court, and until said proceedings and the action pending in the Supreme Court of the United States, referred to in the answer of this defendant heretofore filed in this 435
cause, shall have terminated, any statements as to whether said mortgage is for an amount more than sufficient to exhaust all the property of the said Columbus, Chicago and Indiana Central Railway Company, and any income to be derived from said lease of said Company to the defendant, Pittsburgh, Cincinnati and St. Louis Railway Company, as well as whether said company is insolvent, would be only matters of opinion; therefore this defendant does not admit the allegations of the bill in this regard, but if the same be material to 436
the cause of the complainant it is left to the proof thereof. This defendant denies that all the property of said Columbus, Chicago and Indiana Central Railway Company is in the hands of the defendant, Pittsburgh, Cincinnati and St. Louis Railway Company, under and by virtue of said lease of the said Columbus, Chicago and Indiana Central Railway Company to the defendant Pittsburgh, Cincinnati and St. Louis Railway Company, except as stated in its answer heretofore filed in this cause, the allegations in which answer this defendant

intended should be taken as an averment in this cause; that the said lease was originally invalid for the reasons specifically set out and contained in the bill and amended bill filed in the proceedings referred to in said answer.

That as to all matters not specifically answered herein this defendant refers to the further answer of the Pittsburgh, Cincinnati and St. Louis Railway Com-
438 pany, filed in this cause, and especially to clauses thereof numbered and designated as "Fifth," "Sixth," "Seventh," "Eighth," and "Tenth," which, for the purposes of this suit, this defendant prays may be taken and considered as part of the further answer of this defendant, the same as if herein fully repeated.

Without this, this defendant says there is nothing in said bill and amended bill contained material for it to make further answer unto, and it prays to be dismissed hence with its reasonable costs in this behalf wrong-
439 fully sustained.

THE PENNSYLVANIA RAILROAD COMPANY,
By EDMUND SMITH,
Vice-President.

Attest:
D. S. NEWHALL,
[SEAL.] Ass't Secretary.

440

STATE OF PENNSYLVANIA, }
County of Philadelphia, } ss.

EDMUND SMITH, being duly sworn according to law, says he is the second vice-president of the Pennsylvania Railroad Company, one of the defendants in the above-named bill and amended bill; that the averments contained in its foregoing answer, so far as the same are within his own knowledge, are true, and so far as the same are stated upon information he verily believes

them to be true; and that the seal affixed thereto is the corporate seal of the said defendant and has been so affixed in verification of its said answer.

EDMUND SMITH.

Sworn and subscribed before me this 12th day of September, A. D. 1882.

Witness my hand and official seal.

[SEAL.] JNO. C. SIMS, JR.,
Notary Public. 442

WILLARD & DRIGGS,
Solicitors for Defendant, P. R. R. Co.
R. BIDDLE ROBERTS,
Of Counsel.

Endorsed: Filed Sept. 16, 1882. Wm. H. Bradley, Clerk.

Afterwards, to wit, on the 21st day of September, 443
1882, came the complainant, by its solicitors, and filed in said clerk's office its replication to the answers of the defendants in said entitled cause, which said replication is in the words and figures following, to wit:

The replication of the complainant to the separate answers of the said The Pittsburgh, Cincinnati and St. Louis Railway Company and the Pennsylvania Railroad Company.

This repliant, saving and reserving to itself all manner of advantage of exception to the manifold insuffi- 444
ciencies of said answers and each of them, for replication thereunto says its bill is true, and that the said answers of the said defendants, and each of them, are uncertain, untrue, and insufficient; all which this repliant is ready to prove.

LYMAN TRUMBULL,
Solicitor for Complainant.

Endorsed: Filed Sept. 21, 1882. Wm. H. Bradley, Clerk.

Afterwards, to wit, on the fourth day of November, in the adjourned October Term of said Court, A. D. 1882, in the record of the proceedings thereof in said entitled cause before Hon. Thomas Drummond, Circuit Judge, is the following entry, to wit:

Order.

446

THE KEOKUK AND HAMILTON BRIDGE COMPANY vs. THE PITTSBURGH, CINCINNATI AND ST. LOUIS RAILWAY COMPANY ET AL.	In Chancery.

Now, on this day, on motion of the defendant, and
447 with the consent of the plaintiff, it is ordered that the defendant have leave to amend its answer in this case, said amendment to be filed now as of the twentieth day of September, A. D. 1882. And on motion of the plaintiff it is ordered that this case be referred to Henry W. Bishop, one of the masters of this Court, to take proofs upon the issues herein, and, upon those proofs and any other evidence that may be taken in the cause, report his conclusions thereon to the Court with all reasonable dispatch.

448

Afterwards, to wit, on the sixth day of November, 1882, came the P., C. & St. L. Ry. Co. and the P. R. R. Co., by their solicitors, and filed in said Clerk's Office their amended answers in said entitled cause, which said amended answers are in the words and figures following, to wit:

The Amended Answer of the Defendant, Pittsburgh, Cincinnati and St. Louis Railway Company. 450

This defendant, reserving unto itself all rights, &c., by leave of Court, further answering, says:

That the Columbus, Chicago and Indiana Central Railway Company, defendant herein, and the owner of the line described in the leases mentioned in complainant's bill, dated respectively January 22, 1869, and February 1, 1870, had not on said dates authority or power by the laws of the State of Indiana to execute 451 any such lease and contract for the demise and lease of its railroad within the State of Indiana to this defendant.

That this defendant had not on said dates authority or power by the laws of the State of Ohio to take a lease of a railroad in the State of Indiana.

Without this, &c.

THE PITTSBURGH, CINCINNATI AND ST. LOUIS RAILWAY COMPANY,

By GEORGE DRIGGS, 452
Its Attorney.

WILLARD & DRIGGS,
Solicitors for P., C. & St. L. Ry. Co.

R. BIDDLE ROBERTS,
Of Counsel.

Endorsed: Filed Nov. 6, 1882, as of Sept. 20, 1882. Wm. H. Bradley, Clerk.

453 *Exhibit No. 1—Exhibit H.*

The Amended Answer of the Defendant, Pennsylvania Railroad Company. (Filed November 6, 1882, as of September 20, 1882.)

This defendant, reserving unto itself all rights, &c., by leave of court, further answering, says:

That the Columbus, Chicago and Indiana Central Rail-
454 way Company, defendant herein, and the owner of the line described in the leases mentioned in complainant's bill, dated, respectively, January 22, 1869, and February 1st, 1870, had not, on said dates, authority or power by the laws of the State of Indiana to execute any such lease and contract for the demise and lease of its railroad within the State of Indiana to this defendant.

That the defendant, Pittsburgh, Cincinnati and St. Louis Railway Company, had not, on said dates, authority or power by the laws of the State of Ohio to
455 take a lease of a railroad in the State of Indiana.

Without this, &c.

THE PENNSYLVANIA RAILROAD COMPANY,
By GEORGE DRIGGS,
Its Attorney,
WILLARD & DRIGGS,
Solicitors for P. R. R. Co.

R. BIDDLE ROBERTS,
Of Counsel.

456 [ENDORSED:]

Filed November 6, 1882, as of September 20, 1882.
WM. H. BRADLEY,
Clerk.

On the same day, to wit, on the 12th day of May, 1883, came the Pittsburgh, Cincinnati and St. Louis Railway Company, by its solicitors, and filed in said clerk's office its amended and supplemental answer in

said entitled cause, which said answer is in the words and figures following, to wit:

UNITED STATES OF AMERICA, Northern District of Illinois, } ss.:

IN THE CIRCUIT COURT THEREOF,

IN CHANCERY. 458

KEOKUK AND HAMILTON BRIDGE COMPANY

vs.

PITTSBURGH, CINCINNATI AND ST. LOUIS RAILWAY COMPANY ET AL.

459

And now comes the Pittsburgh, Cincinnati and St. Louis Railway Company, and, by leave of Court first had and obtained, files this its amended and supplemental answer to the original and amended bills of complaint heretofore filed against it in the above-entitled cause.

And by way of amendment to its original and further answers heretofore filed, without waiving any portion thereof, it says that at the time of the transactions described in the original and amended bill of complaint 460 in this cause, the Columbus, Chicago and Indiana Central Railway Company was a corporation formed in the States of Ohio, Indiana and Illinois by the consolidation of other railroad corporations before that time existing, and owned, managed and operated a railway, having its eastern terminus in the city of Columbus, in the State of Ohio, with three western termini, one at Indianapolis, in the State of Indiana, another at the State line, between the States of Illinois and Indiana, near the town of Sheldon, and a third in the city of Chi-

cago, in the State of Illinois; that said railway company had no legal capacity, and had not and never has been authorized by law to build or operate a railway having its terminus at or near the said Keokuk and Hamilton bridge, or within two hundred miles thereof; and that said contracts in the said original bill and the amended bill described are, and always have been, invalid and void for want of legal authority on the part of the Columbus,
462 Chicago and Indiana Central Railway Company to enter into the same or either of them.

And, further answering, this defendant says that the directors and stockholders of the said Columbus, Chicago and Indiana Central Railway Company did not, nor did either of said bodies, at any time authorize the execution of said original contracts, or either of said modifications, or the use of the corporate seal of the said company to evidence the same, and said contracts with said modifications are wholly void for want of au-
463 thority conferred by either directors or stockholders of the Columbus, Chicago and Indiana Central Railway Company upon B. E. Smith, who was then the president of said company, to execute the same.

And, by way of supplemental answer, this defendant says that heretofore, in the year 1875, proceedings were commenced for the foreclosure of the mortgage, described in the original bill of complaint as antedating the execution of said bridge contract, being the same mortgage the existence of which is admitted in its fur-
464 ther answer filed herein by the trustees, to whom said mortgage had been given, namely, James A. Roosevelt and William R. Fosdick, in the Circuit Courts of the United States for the Northern District of Illinois, the District of Indiana, and the Southern District of Ohio, against the said Columbus, Chicago and Indiana Central Railway Company and others, and that such proceedings have been had in said causes, said Columbus, Chicago and Indiana Central Railway Company, and all other parties named as defendants, having been made such by proper process; that said Roosevelt and Fos-

dick were appointed and qualified as Receivers of all and singular the said mortgaged premises, rights, franchises and all income of the said Columbus, Chicago and Indiana Central Railway Company, and in obedience to orders of said Circuit Courts, made in the premises, said last-named company, by deeds duly executed, afterwards, on May 25 and on August —, 1875, duly conveyed said mortgaged premises, rights and franchises, and said income, to said Roosevelt and Fosdick, 466 and afterwards decrees were entered therein for the sale of the railway property, rights and franchises of the said Columbus, Chicago and Indiana Central Railway Company, with the right to the purchaser to affirm or disaffirm the lease of said railway to this defendant, of which lease the Pennsylvania Railroad Company is guarantor, described in the original bill of complaint filed in this cause.

And said railway property, rights and franchises, with said right to affirm or disaffirm said lease, were sold 467 upon the 10th day of January, 1883, to William L. Scott, John S. Kennedy and Charles J. Osborn, for a smaller sum than the debt secured by said mortgage; and, afterwards, by concurrent decrees of all of said courts in said foreclosure proceedings, said sale was confirmed, and full payment having been made for said purchase, afterwards the officers making such sale—namely, William P. Fishback, Master in Chancery of the Circuit Court of the United States for the District of Indiana; and Jacob D. Cox, appointed Special Mas- 468 ter Commissioner for the purpose of making such sale by the Circuit Court of the United States for the Southern District of Ohio, Western Division—were ordered to and did convey all the railroad property, rights and franchises of said Columbus, Chicago and Indiana Central Railway Company, together with said right to affirm or disaffirm said lease to said Scott, Kennedy and Osborn, in fee-simple. Thereafter, on February 21, 1883, said purchasers notified this defendant in writing that they disaffirmed said lease, and thereby

said lease came to an end and was avoided, and ceased to have any legal force and efficacy whatever.

And by other decrees of the Circuit Court for the District of Indiana, made and entered in said cause, wherein this defendant was plaintiff and said Columbus, Chicago and Indiana Central Railway Company and said Roosevelt and Fosdick and others were defendants, it has been ordered to pay over all unpaid net
470 earnings of said railway to said purchasers, Scott, Osborn and Kennedy, and that said decrees are in full force, and this defendant is bound to and will execute the same, and has begun and entered upon the execution thereof.

And this defendant further avers that, in accordance with said decrees, possession of said railroad property, rights and franchises has been surrendered to the said purchasers, and that it has been wholly ousted and evicted from all and singular the premises, rights and
471 franchises leased to it as aforesaid; and it relies upon the cancellation of said lease, and the ouster and eviction as aforesaid, as a full and perfect answer to the relief sought in the bill and amended bill of complaint filed in this cause. Without this, etc.

[Seal P., C. & St. L. R. W. Co.]

THE PITTSBURGH, CINCINNATI AND ST. LOUIS RAILWAY COMPANY,
By WM. THAW,
Second Vice-President.

472

STATE OF PENNSYLVANIA, }
County of Allegheny. } ss.:

WILLIAM THAW, being duly sworn according to law, says he is the second vice-president of the Pittsburgh, Cincinnati and St. Louis Railway Company, one of the defendants in the above-named bill and amended

bill; that the averments contained in its foregoing answer, so far as the same are within its own knowledge, are true, and so far as the same are stated upon information he verily believes them to be true; and that the seal affixed hereto is the corporate seal of the said defendant, and has been so affirmed in verification of its said answer.

WM. THAW.

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Sworn and subscribed before me this 28th day of March, A. D. 1883.

Witness my hand and official seal.

[NOTARIAL SEAL.] W. C. BOLE,
Notary Public.

WILLARD & DRIGGS,
Solicitors for Defendant P., C. & St. L. Ry. Co.

GEO. HOADLY,
R. BIDDLE ROBERTS,
Of Counsel. 475

Endorsed: Filed May 12, 1883. WM. H. BRADLEY, Clerk.

Afterwards, to wit, on the 6th day of June, 1883, there was filed in said clerk's office the master's report in said entitled cause, which said report is in the words and figures following, to wit: 476

Master's Report.

TO THE HONORABLE THE JUDGES OF SAID COURT:

The above-entitled cause having been referred to me, as Master in Chancery of said Court, by orders of said Court entered herin on the fourth (4th) day of November, A. D. 1882, and the seventeenth (17th) day of

477 *Exhibit No. 1—Exhibit II.*

January, A. D. 1883, I do hereby report that, having notified the parties interested of a hearing before me for the purposes in the said orders expressed, at my office, No. 43 United States Government Building, Chicago, on the 28th day of November, A. D. 1882, I was attended on said last named day by L. Trumbull, Esq., of counsel for said complainant, and by R. B. Roberts, Esq., and Messrs. Willard & Driggs, of
478 counsel for defendants; also by the following witnesses, to wit: A. L. Griffin, C. H. Mellen, and J. H. Cole, each of whom testified herein, and their testimony was duly taken, is hereto annexed, and made a part hereof.

Complainant's counsel produced in evidence before me the original letters, agreements and amendments to the contract between the parties to this suit, and which are referred to in said testimony.

I was again attended, by adjournment, by counsel for defendants, who produced in evidence before me
479 the deposition of S. B. Liggett, taken herein under order of the 17th day of January, A. D. 1883, and filed herein on the 13th day of February, A. D. 1883; also the depositions of John C. Sims, Jr., and Theodore Gilman, taken under said order and filed on the 19th day of February, A. D. 1883.

I was again attended, by adjournment, on the 22d day of May, A. D. 1883, by counsel for the respective parties and by Charles Watts, who testified herein on behalf of defendants, and whose testimony was duly taken and is
480 returned herewith.

Defendants' counsel produced in in evidence before me certified copies of the following documents and entries, to wit:

Articles of consolidation of the Columbus and Indiana Central Railway Company and the Great Eastern Railway Company.

Minutes of a meeting of the stockholders of the Pittsburgh, Cincinnati and St. Louis Railway Company, held in Steubenville, Ohio, on February 1, 1869,

relating to leasing the Columbus, Chicago and Indiana Central Railway Company.

Records of the Pittsburgh, Cincinnati and St. Louis Railway Company on same subject.

Records of the Columbus, Chicago and Indiana Central Railway Company of stockholders' meeting in Columbus, Ohio, on March 10, 1870, and January 29, 1869.

Articles of agreement for consolidation between the 482
Pan Handle Railway Company, the Holliday's Cove Railroad Company, and the Steubenville and Indiana Railroad Company into the Pittsburgh, Cincinnati and St. Louis Railway Company.

Statement of net earnings of the Columbus, Chicago and Indiana Central Railway Company from January 1, 1875, to September 30, 1882, showing date of payment of same under orders of the United States Circuit Court, District of Indiana.

I was again attended, by adjournment, on the 30th 483
day of May, A. D. 1883, by counsel for the respective parties, when complainant's counsel offered in evidence before me a letter from Thomas D. Messler, comptroller of the Pittsburgh, Cincinnati and St. Louis Railway Company, to Theo. Gilman, treasurer Keokuk and Hamilton Bridge Company, New York, which complainant's counsel retained, but a copy of which is set out in the testimony herewith returned.

Also a statement, numbered 23, of the receipts and
expenditures of the complainant company for six months 484
ending March 1, 1883.

(Statement 23 omitted from this abstract).

Defendants' counsel offered in evidence before me the following printed copies:

Decree entered in the Circuit Court of the United States for Southern District of Ohio, November 23, 1882, for sale of the Columbus, Chicago and Indiana Central Railway in Ohio, Illinois and Indiana.

Decrees of the Circuit Courts of the United States

for the Districts of Indiana, Northern Illinois, and Southern Ohio, confirming the said sale.

Further supplemental bill in suit of Roosevelt and Fosdick vs. Columbus, Chicago and Indiana Central Railway and others.

Cross-bill of William L. Scott, in suit of James A. Roosevelt and William R. Fosdick vs. The Pittsburgh, Cincinnati and St. Louis Railway Company, in the
486 Circuit Court of the United States for the Northern District of Illinois.

Decree of the United States Circuit Court for the District of Indiana, directing deeds of the Columbus, Chicago and Indiana Central Railway property to be executed to the purchasers.

Deeds of conveyance of same property to the Chicago, St. Louis and Pittsburgh Railroad Company.

Certificates of incorporation of said last-mentioned company in Indiana and Illinois.

487 Testimony of M. H. Taylor, taken on the 26th day of May, A. D. 1883, and of Gordon Moodie, taken the 18th day of May, A. D. 1883, and certified copy of resolution of Board of Directors of the Columbus, Chicago and Indiana Central Railway Company, at a meeting held February 11, 1870.

I further report that I have carefully compared the exhibits marked respectively "A," "E," "F," and "C," attached to the bill of complaint herein, with the originals thereof, to wit:

488 An agreement, dated January 19, 1869, between the Toledo, Peoria and Wabash Railway Company, party of the first part; the Des Moines Valley Railroad Company, party of the second part; the Columbus, Chicago and Indiana Central Railway Company, party of the third part; the Toledo, Wabash and Western Railway Company, party of the fourth part, and the Keokuk and Hamilton Bridge Company, party of the fifth part (being the original of said Exhibit A).

An agreement, dated June 6, 1871, between said

last-mentioned parties (being the original of said Exhibit E).

An agreement, dated November 25, 1871, between same parties (being the original of said Exhibit F).

A letter, dated February 16, 1869, from T. L. Jewett to B. E. Smith, president of the Columbus, Chicago and Indiana Central Railway Company (being the original of said Exhibit C).

And on said comparison I found all said exhibits so 490
attached to said bill of complaint to be true and correct copies of the said originals (except in such clerical errors as I have indicated by red-ink marks on the face of said exhibits).

I further report that, from an examination of all of the documents and of the testimony so produced in evidence before me as aforesaid, and from computations made by me, I find as follows:

FIRST. That all the material allegations of said bill 491
of complaint contained are sustained by the proofs.

SECOND. That it was, in and by an agreement dated the 6th day of June, A. D. 1871, hereinbefore referred to, and made between the Toledo, Wabash and Western Railway Company, the Des Moines Valley Railroad Company, the Toledo, Peoria and Warsaw Railway Company, the Columbus, Chicago and Indiana Central Railway Company, and the said complainant herein, The Keokuk and Hamilton Bridge Company, agreed 492
between the parties thereto that, in addition to the payment of tolls for the use of said railroad bridge as thereinbefore provided, upon the first days of March and September in each year settlements for the previous six months' deficiency in the earnings of said Keokuk and Hamilton Bridge Company should be made, and that the amounts required to net the said last-named company the sum of forty thousand dollars, ($40,000) from railroad freight traffic for each previous six months should be promptly paid over to the

treasurer of the Bridge Company by said Railroad Companies so using said bridge in the proportions therein named, to wit, one-fourth part of said ascertained deficiency by each of said companies.

THIRD. That under said agreement there is now due and owing said complainant by defendants the Pittsburgh, Cincinnati and St. Louis Railway Company (as
494 lessee of said Columbus, Chicago and Indiana Central Railroad) and its guarantor, the Pennsylvania Railroad Company, as their one-fourth proportionate part of the ascertained deficiency shown to have been existing in the receipts of said complainant company, of the sum required to net said complainant the sum of forty thousand dollars ($40,000) each six months, for the period extending from the first (1st) day of September, A. D. 1874, to the first (1st) day of March, A. D. 1883, the sum of one hundred and eighteen thou-
495 sand and seventy-six dollars and eighty-nine cents ($118,076.89).

FOURTH. That there is now due and owing to said complainant by said defendants the sum of twenty-seven thousand nine hundred and twenty-seven dollars and fifty cents ($27,927.50) for interest on the sum so as aforesaid found to be due said complainant from the respective dates when said half-yearly payments became due and unpaid to the first (1st) day of March,
496 A. D. 1883, making a total sum due and payable to the said complainant the Keokuk and Hamilton Bridge Company, as aforesaid, of one hundred and forty-six thousand and four dollars and thirty-nine cents ($146,-004.39).

FIFTH. That all the half-yearly amounts which had become due and payable to the said complainant on the said deficiency account, which had become due and payable up to and including the first (1st) day of September, A. D. 1874, were paid by the said defendant

the Pittsburgh, Cincinnati and St. Louis Railway Company.

SIXTH. That in the year 1869, at the date of the original bridge contract hereinbefore referred to, the Toledo, Wabash and Western Railway extended from Toledo, Ohio, to Camp Point, Illinois, with a branch to Hamilton, Illinois. That the Peoria and Warsaw Railroad extended from Peoria to Warsaw, Illinois, 498
and the Des Moines Valley Railroad from Keokuk to Des Moines, Iowa, connecting at Keokuk with said Toledo, Wabash and Western Railway, Toledo, Peoria and Warsaw Railroad, and Chicago, Burlington and Quincy Railroad, crossing the Burlington and Missouri Railroad at Ottumwa and the Chicago, Rock Island and Pacific Railroad at Des Moines, and that said Keokuk and Hamilton Bridge was accepted by the complainant company on the 13th day of June, A. D. 1871, and the said railroads began the use of it next 499
day.

SEVENTH. That said Columbus, Chicago and Indiana Central Railway Company, in their answer to said bill of complaint; admit said bridge contract and the amendments thereto, but disclaim any interest in said contract or this suit, alleging that said contract and amendments were entered into by them at the request of said other defendants, who assumed all the liabilities and obligations and became entitled to all the benefits 500
of said bridge contract.

EIGHTH. That it was agreed between said parties that they should refer to and use the record of the Supreme Court of the United States, No. 256, the Pittsburgh, Cincinnati and St. Louis Railway Company and the Pennsylvania Railroad Company, appellants, vs. The Columbus, Chicago and Indiana Central Railway Company and others, and No. 376, the Columbus, Chicago and Indiana Central Railway

501 *Exhibit No. 1—Exhibit II.*

Company and others, appellants, vs. the Pittsburgh, Cincinnati and St. Louis Railway Company, the Pennsylvania Railroad Company and James Pullan.

NINTH. That said Columbus, Chicago and Indiana Central Railroad was sold and conveyed to William L. Scott and others, trustees, under decree of foreclosure entered on the 23d day of November, A. D. 1882, in
502 the United States Circuit Court, and that subsequently thereto, to wit, on the 17th day of March, A. D. 1883, said trustees conveyed same to the Chicago, St. Louis and Pittsburgh Railroad Company.

I return all documents used by me in making this report [and] make the same a part hereof.

All of which is respectively submitted.

HENRY W. BISHOP,
Master, &c.

503 Endorsed: Filed June 6, 1883. Wm. H. Bradley, Clerk.

Afterwards, to wit, on the 11th day of June, 1883, came the defendants and filed in said Clerk's office their exceptions to the master's report, which said exceptions are in words and figures, to wit:

504 **Exceptions to Master's Report.**

And now, to wit, the 11th day of June, A. D. 1883, came the respondents, to wit, the Pittsburgh, Cincinnati and St. Louis Railway Company and Pennsylvania Railroad Company, to the above-entitled cause, and submit the following exceptions to the Master's report, filed herein the sixth day of June, A. D. 1883, and claim that said Master in said report has erred:

I. For that the said Master has exceeded the limits

of the authority given him by the order of November 4, 1882, as will hereinafter more fully appear.

II. For that the said Master has erred in finding that the material allegations in complainant's bill of complaint are sustained by the proof.

III. For that the said Master has erred in finding that the alleged agreement of June 6, 1871, between certain railway companies and the Keokuk and Hamilton Bridge Company required the payment of a certain sum of money, one-fourth of which he erroneously finds to be due from the two defendant companies hereinbefore named. 506

IV. For that the said Master's finding of the sum of $118,076.89 against the Pittsburgh, Cincinnati and St. Louis Railway Company, as lessee of the Columbus, Chicago and Indiana Central Railway Company, is clearly erroneous, said lease having long since ceased to exist; and against the Pennsylvania Railroad Company as its guarantor, is unsustained by the proof and unjustifiable on any construction of the alleged agreements. 507

V. For that the said Master has erred in the calculation of interest, amounting to $27,927.50, there being no direction for any such computation, and therefore the said Master has erred in his alleged total of $146,004.39. 508

VI. For that the said Master has erred in finding that the payments made prior to September 1st, 1874, were made by the defendant the Pittsburgh, Cincinnati and St. Louis Railway Company, whereas, in truth and in fact, if so paid by said company, such payments were made as lessee of the Columbus, Chicago and Indiana Central Railway.

VII. For that the finding of the said Master as to

certain averred connections of the Toledo, Wabash and Western Railway, with a Hamilton Branch, and the Toledo, Peoria and Warsaw Railroad, and the Des Moines Valley Railroad, is totally without the record, is irrelevant, and is unsustained by the proof.

VIII. For that whereas the agreements of lease and amended lease by and between the Columbus, Chicago
510 and Indiana Central Railway Company, lessor, the Pittsburgh, Cincinnati and St. Louis Railway Company, lessee, and the Pennsylvania Railroad Company, guarantor, made exhibits to the complainant's bill of complaint, were executed by authority of the directors and stockholders of said lessor and lessee companies, and of the directors of said guarantor company, and have not since been modified in any respect by any agreement of any of said companies, and do not, nor does either of them, contain any provision for the pay-
511 ment of any of the sums sued for in this case, or bind either of said companies to the performance of either of the agreements of January 19, 1869, June 6, 1871, and November 25, 1871, set forth in the complainant's bill and amended bill, or any part thereof.

IX. For that neither the Columbus, Chicago and Indiana Central Railway Company, the Pittsburgh, Cincinnati and St. Louis Railway Company, nor the Pennsylvania Railroad Company, ever had authority in
512 law to enter into the alleged agreements set out in the complainant's bill and amended bill, being the same, dated January 19, 1878, June 6, 1871, and November 25, 1871, or into either of them.

X. For that said alleged agreements were not, nor was either of them, in fact, authorized by the directors or stockholders of the Columbus, Chicago and Indiana Central Railway Company, or of the Pittsburgh, Cincinnati and St. Louis Railway Company, or of the Pennsylvania Railroad Company.

XI. For that the written request set forth in the bill and amended bill, bearing date February 16, 1869, the further written request, relating to a modification dated June 6, 1871, of the alleged agreement of January 19, 1869, set forth in said bill and amended bill, and the further written request, dated November 29, 1871, each addressed to B. E. Smith, president of the Columbus, Chicago and Indiana Central Railway Company, by Thomas L. Jewett and Thomas A. Scott, 514
respectively, as president of the Pittsburgh, Cincinnati and St. Louis Railway Company, and J. Edgar Thomson, as president of the Pennsylvania Railroad Company, were the individual acts of said Jewett, Scott and Thomson, respectively, and not of said companies, or either of them, and were not, nor was either of them, authorized, nor has either of said acts been ratified by either of said companies, or by either the directors or stockholders of either of said companies.

515

XII. For that the Pittsburgh, Cincinnati and St. Louis Railway Company was ousted and evicted on the 1st day of October, 1874, and has ever since remained wholly ousted and evicted from its lease and amended lease of the Columbus, Chicago and Indiana Central Railway, and from all gains, profits and income thereof, and from the possession thereof under said lease and amended lease by title antecedent in time and superior in law to that of the lessor thereof, namely, by judicial orders made in proceedings for receivership, foreclosure 516
and sale of said railway under the mortgage described in complainant's bill of complaint.

XIII. For that no consideration passed to or was received by the Pittsburgh, Cincinnati and St. Louis Railway Company, or the Pennsylvania Railroad Company, or either of them, for entering into or executing either of said alleged agreements set forth in said original and amended bill of complaint, dated January 19, 1869, June 6, 1871, and November 25, 1871, and said

517 *Exhibit No. 1—Exhibit H.*

agreements are, and each of them is, wholly without consideration in law or fact.

WILLARD & DRIGGS,
Solicitors for Defendant P., C. & St. L. Ry. Co. and P. R. R. Co.

GEO. HOADLY,
R. BIDDLE ROBERTS,
Of Counsel.

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Endorsed: Filed June 11, 1883. Wm. H. Bradley, clerk.

Afterwards, to wit, on the 21st day of January, 1884, in the December Term of said Court, A. D. 1883, in the record of the proceedings thereof in the above-entitled cause, before Hon. JOHN M. HARLAN, one of the Justices
519 of the Supreme Court, is the following entry, to wit:

Decree.

THE KEOKUK AND HAMILTON BRIDGE COMPANY vs. 520 THE PITTSBURGH, CINCINNATI AND ST. LOUIS RAILWAY COMPANY, THE PENNSYLVANIA RAILROAD COMPANY and THE COLUMBUS, CHICAGO AND INDIANA CENTRAL RAILWAY COMPANY.	In Chancery.

This cause having been heard on the Master's Report, filed herein on the sixth (6) day of June, A. D. 1883, and the exceptions of the Pittsburgh, Cincinnati and

St. Louis Railway Company and the Pennsylvania Railroad Company thereto, the pleadings and the evidence, and argued by counsel; and thereupon, upon consideration thereof, it is ordered, adjudged and decreed that the said exceptions be overruled, that the said Master's Report be confirmed, and that the said complainant The Keokuk and Hamilton Bridge Company do have and recover of and from the said defendants The Pittsburgh, Cincinnati and St. Louis Railway Company and 522
the said Pennsylvania Railroad Company the sum of one hundred and forty-six thousand and four dollars and thirty-nine cents ($146,004.39), found by the said Master's Report to be due and owing to said Keokuk and Hamilton Bridge Company by said Pittsburgh, Cincinnati and St. Louis Railway Company and the said Pennsylvania Railroad Company on the first (1st) day of March, A. D. 1883, together with six (6) per cent. interest thereon from said first day of March, A. D. 1883, amounting altogether to the sum of one hun- 523
dred and fifty-three thousand seven hundred and ninety-one dollars and twenty-nine cents ($153,791.29), and the cost of this suit to be taxed, and that it have execution therefor.

And now, at the same time and term, in open Court, came the defendants, respectively, The Pittsburgh, Cincinnati and St. Louis Railroad Company and The Pennsylvania Railroad Company, and each for itself prayed an appeal from the foregoing decree, and each and every part thereof, to the Supreme Court of the 524
United States, which appeal is now at the same time and Court here by the Court in open session allowed, said appeal to be effected according to law.

180 Afterwards, to wit, on the third day of January, 1891, there was filed in the clerk's office of said court, in said entitled cause the following stipulation:

Stipulation. Filed Jan. 3, '91.

UNITED STATES OF AMERICA, *Northern District of Illinois,* } ss:

In the United States Circuit Court, Northern District of Illinois, Northern Division.

THE KEOKUK AND HAMILTON BRIDGE COMPANY *vs.* THE PITTSBURGH, CINCINNATI AND ST. LOUIS RAILway Company and The Pennsylvania Railroad Company. } In Chancery.

It is stipulated that the amended several answer of said defendants, filed herein November 28, 1890, shall be taken and construed to admit the following allegations of the bill of complaint in this cause: "Your orator further shows that each of said defendants prayed an appeal from said decree to the Supreme Court of the United States, which appeals were allowed and perfected, and that said appeals having been heard by said Supreme Court, afterwards, on the 13th day of May, 1889, by the decision and decree of said Supreme Court, the said decree of said circuit court of the United States was in all things affirmed."

GEO. HOADLY,
Of Counsel for said Def'ts.

TRUMBULL, WILLITTS, ROBBINS & TRUMBULL,
Solicitors for Complainant.

(Endorsed:) Filed Jan'y 3, 1891. Wm. H. Bradley, clerk.

181 Circuit Court of the United States for the Northern District of Illinois, Northern Division.

THE KEOKUK AND HAMILTON BRIDGE COMPANY, Complainant, *vs.* THE PITTSBURGH, CINCINNATI AND ST. LOUIS RAILway Company and the Pennsylvania Railroad Company, Defendants. } In Chancery.

Replication. Filed July 20, '91.

The replication of the complainant to the amended several answer of the said defendants.

This repliant, saving and reserving to itself all manner of advantage of exception to the manifold insufficiencies of said answers and

each of them, for replication thereunto says its bill is true, and that the said answers of the said defendants, and each of them, are uncertain, untrue and insufficient, all which this repliant is ready to prove.

L. & P. TRUMBULL,
Solicitors for Complainant.

(Endorsed:) Filed July 20, 1891. Wm. H. Bradley, clerk.

182 *Order of Court.*

UNITED STATES OF AMERICA:

In the Circuit Court of Appeals of the United States for the Seventh Judicial Circuit, October Term, 1893.

The Hon. Melville W. Fuller, Chief Justice of the United States, assigned to the seventh judicial circuit, not being present and the Hon. William A. Woods, circuit judge of the seventh judicial circuit, being disqualified by reason of having heard and decided the following case in the circuit court, there were present the Hon. James G. Jenkins, circuit judge of the said seventh judicial circuit; the Hon. Romanzo Bunn, district judge of the western district of Wisconsin, and the Hon. William H. Seaman, district judge of the eastern district of Wisconsin, holding said court of appeals, when there came on to be heard on the 11th day of October, 1893, the causes of The Pittsburg, Cincinnati & St. Louis Railway Company, appellant, *vs.* The Keokuk & Hamilton Bridge Co., appellee, and The Pennsylvania Railroad Company, appellant, *vs.* The Keokuk & Hamilton Bridge Company, appellee, on separate appeals from the decree of the United States circuit court for the northern district of Illinois, it being heard as one cause, there arose upon the pleadings in the cause certain propositions of law, concerning which the instruction of the Supreme Court of the United States is desired.

And because this court is in doubt whether, in view of the decision of the Supreme Court of the United States in the cause
183 between the parties hereto referred to in the pleadings and reported in 131 U. S. Reports, 371, it is at liberty to consider or sustain the eviction pleaded in this case as a valid defense to the claim of the appellee and whether the contracts with the bridge company could be avoided by any transaction with respect to the lease—

It is therefore ordered that the pleadings in this case, to wit, the bill, the amended answer, and the replication, be certified to the Supreme Court of the United States for its opinion and instruction upon the following questions:

1. Is this court at liberty, in view of the decision and decree in the former case between these parties referred to in the pleadings, to consider or sustain the defense of eviction pleaded in this case?

2. Are the contracts between the bridge company and the appellants so independent of the lease that they would not be affected nor the defendant railway companies released from liability thereunder by termination of the lease by eviction or otherwise?

184 United States Circuit Court of Appeals for the Seventh Circuit.

I, Oliver T. Morton, clerk of the United States circuit court of appeals for the seventh circuit, do hereby certify that the foregoing pages contain a true copy of the bill, amended answer, and replication, together with the order of said court entered January 8th, 1894, in the cases of Pittsburg, Cincinnati & St. Louis Railway Co. *vs.* Keokuk & Hamilton Bridge Co., Pennsylvania Railroad Co. *vs.* Keokuk and Hamilton Bridge Co., Nos. 101 & 102, October term, 1892, as the same remain upon the files and records of said United States circuit court of appeals for the seventh circuit.

Seal United States Circuit Court of Appeals, Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals for the seventh circuit, at the city of Chicago, this 9th day of January, A. D. 1894.

OLIVER T. MORTON,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

Endorsed on cover: Case No. 15,496. U. S. circuit court of appeals, 7th circuit. Term No., 1112. The Pittsburg, Cincinnati and St. Louis Railway Company and The Pennsylvania Railroad Company, appellants, *vs.* The Keokuk and Hamilton Bridge Company. Filed February 2d, 1894. (Certificate.)

Office Supreme Court U. S.
FILED.
APR 7 1894
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

THE PITTSBURGH, CINCINNATI AND ST. LOUIS RAILWAY COMPANY AND THE PENNSYLVANIA RAILROAD COMPANY,
Defendants-Appellants,

vs.

THE KEOKUK AND HAMILTON BRIDGE COMPANY,
Plaintiff-Appellee.

No. 1112.

ARGUMENT IN OPPOSITION TO MOTION FOR THE SUBMISSION OF THE CAUSE ON PRINTED BRIEFS WITHOUT ORAL ARGUMENT.

I have been served by the solicitors for appellee with notice that, on Monday, April 9th, they will move the submission of this case to the Court upon printed briefs. They accompany this notice with a copy of their brief.

In view of the possibility that this may be granted, I have filed my brief with the clerk, and, if prevented, by the granting of the motion, from arguing the case orally, as I desire, then the printed argument will present the claims of appellants as well as I can do by brief. But I desire earnestly to protest against the granting of this motion.

If there be any precedent for such action, I do not know it. If there be any rule or practice

authorizing it, the same has not, as far as I am aware, been made public by the Court.

The statute creating the Circuit Court of Appeals has been in existence for more than three years, and yet this Court has never, as far as I know, publicly announced that questions reserved by that Court for decision here are to be submitted without the opportunity of oral argument by either party.

I am told by the clerk that this motion is based upon the thirty-second rule, together with rule six. But the case does not come within the thirty-second rule. The decree of the Circuit Court appealed from far exceeded the sum of five thousand dollars (it amounted to $163,791.29), and, as to rule six, it is enough to say that this is not a motion to dismiss a writ of error or appeal.

My reasons for desiring to argue this case orally are, *first*, because I believe it to be the right of the appellants, under the provision of the Constitution guaranteeing them from deprivation of property, except by "due process of law," to have an oral argument in their behalf, in this Court, under the circumstances, and, *secondly*, because the facts of this case, in my opinion, justify the appeal to the Court not to withdraw my privilege as a counsellor of this Court to argue the questions involved orally. If I did not think an oral argument would help the Court, I should not ask it.

First—The twenty-second rule, as I understand it, entitles counsel for appellants to argue this case orally. No modification has ever been made of this rule so as to exclude from its effect cases reserved by the Circuit Court of Appeals. If there is to be a general rule forbidding oral argument in reserved causes, I submit it should be applied generally, and not, before its adoption, to this or any other particular case, but should be

made applicable to some class, this or other, of cases, and be promulgated in advance, so that counsel may be duly notified.

To change the rule in a particular case or class of cases, so as to deprive parties in whose causes the Circuit Court of Appeals has found so much difficulty, as to induce their submission of questions for answer here, is, I respectfully submit, to deal non-judicially, and beyond the powers conferred by Rev. Stat. §§ 917, 918.

To deprive a party of all opportunity of argument is, I submit, forbidden by the Constitutional provision securing "due process of law." Is it not equally forbidden to deny oral argument in a particular case; at least without change of the rule, and prior promulgation of the change?

In *Westervelt* vs. *Gregg*, 12 N. Y. 202, 209, Mr. Justice EDWARDS said:

"Due process of law undoubtedly means, in the due course of legal proceedings, according to those rules and forms which have been established for the protection of private rights,"

In *Taylor* vs. *Porter*, 4 Hill, 147, speaking of the Constitution of the State of New York, Judge BRONSON says:

"The words 'due process of law' in this place cannot mean less than a prosecution or suit, instituted or conducted according to the prescribed forms and solemnities for ascertaining or determining the title to property; it will be seen that the same measure of protection against legislative encroachment is extended to life, liberty and property, and if the latter can be taken without a forensic trial and judgment, there is no security for the others."

Chancellor KENT (2 Comm. 13) says:

"The better and larger definition of due process

of law is that it means law in its regular course of administration through Courts of justice."

Mr. Justice CURTIS, in *Murray's Lessee against Hoboken Land and Improvement Company*, 18 How. at page 276, says, that the fifth amendment to the Constitution, securing to the citizen due process of law—

"is a restraint on the legislative as well as on the executive and judicial powers of the government."

On page 280 he says:

"For though 'due process of law' generally implies and includes *actor*, *reus*, *judex*, regular allegations, opportunity to answer and a trial according to some settled course of judicial proceedings, (citing cases), yet this is not universally true."

He then proceeds to discuss the exceptions, with which we have nothing to do here. The point I make is, that according to the—

"settled course of judicial proceedings,"

in this Court at this time, my clients are entitled to have their counsel heard in oral argument, and that they cannot be deprived of this without a violation of the Constitution of the United States.

That Courts may not make arbitrary exceptions to rules, but must conform to the law of uniformity in rescinding or altering the same and in establishing such exceptions, is well settled. Among the cases to this effect, see—

Thompson vs. *Hatch*, 3 Pick. 512.
Ogden vs. *Robertson*, 15 N. J. Law, 124, 126.
Wall vs. *Wall*, 2 Har. & G. 79, 81, 82.

Hughes vs. *Jackson*, 12 Md. 450, 463.
Coyote G. & S. M. Co. vs. *Ruble*, 9 Oregon, 121, 124, 125.
Owens vs. *Ranstead*, 22 Ill. 162.
Elevated Co. vs. *O'Neill*, 25 Ill. App. 313, 326.
Spangler vs. *Atchison*, 42 Fed. Rep. 305.
Seymour vs. *Phillips*, 7 Bissell, 460, 462.

Secondly, there is no reason for making this case an exception to the existing rule. Not only is the amount of the judgment of the Circuit Court in this case large ($163,791.29), but it is amply secured by the well known responsibility of the appellants, and compensation for delay will be furnished, if the appellants prove to be in the right, by the large rate of interest (six per cent. per annum) accruing upon the judgment, but also, if this judgment be sustained, there will be chargeable by its authority against the defendants forever, without any consideration received by them whatever, liability for one-fourth of the deficiencies or losses of appellee in bridge operations below the standard of eighty thousand dollars a year. This is no slight burden, and will be an obligation of perpetual duration. Moreover it is, as I believe, and have argued in my brief, and shall argue orally if permitted, in direct conflict with that part of the decision made in the former case between these parties, which is reported at page 387 of 131 U. S. Rep.

But I shall not be pardoned for enlarging here upon this proposition, for it is covered by the principal brief. I allude to it now only to indicate the general character of the debate. It is enough at this time to say that if there be any cases in which oral argument should be encouraged, they

are those in which the Circuit Courts of Appeals have found it impossible to reach satisfactory conclusions without the advice of this Court.

It is not to be presumed that such cases come here without reason. They are reserved because of serious doubt in reaching right results, owing to the difficulties encountered by the Circuit Courts of Appeals in answering, to their own satisfaction, the questions submitted to this Court by these learned tribunals. And it does not diminish my desire for oral argument that the Chief Justice, having been of counsel for appellees in the former case, cannot sit in this case.

One other matter has suggested itself to me, viz: That this Court may be of opinion when the case is reached for consideration, that it was not properly reserved, there being no other finding of facts than that which this Court must spell out of the pleadings. My answer to this is, *first*, that the two questions reserved are questions of law and not of fact, and that they do not require any other finding of fact than the showing, made by the pleadings, that the questions might have arisen at the trial, and *secondly*, the reservation itself requires the conclusion that they did so arise. As far as I am competent to waive any objection of this character, it is hereby waived.

While the reservation is not in the form which I desired and strongly urged upon the Circuit Court of Appeals, after, of its own motion, it had determined to reserve, it is, nevertheless, it seems to me, sufficient to present the questions, the final decision of which by this Court is greatly desired.

New York, April 9th, 1894.

Respectfully submitted,

GEO. HOADLY,

Of Counsel for Appellants.

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FILED.
MAR 21 1894
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1893.

No. 1112.

THE PITTSBURGH, CINCINNATI AND ST. LOUIS RAILWAY COMPANY AND THE PENNSYLVANIA RAILROAD COMPANY,

Defendants-Appellants

versus

THE KEOKUK AND HAMILTON BRIDGE COMPANY,

Complainant-Appellee.

RESERVED BY THE CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT AND NORTHERN DISTRICT OF ILLINOIS.

BRIEF OF GEORGE HOADLY FOR APPELLANTS.

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ARGUMENT FOR APPELLANTS.

Statement of Case.

This is a sequel to the suit between the same parties, decided by this Court and reported in 131 U. S. 371. It comes here, upon a certificate of reservation, from the Circuit Court of the United States for the Northern District of Illinois, for the decision of two questions of law, viz.: *first*,

whether the decree in the former case precludes consideration of the defence of eviction relied on in this case; and, *secondly*, whether such defence, if true in fact, will be a sufficient answer in law to the claim of the complainant.

A brief outline of the facts may serve to refresh the memory of those Justices who participated in the former decision, and be of assistance to those who did not.

The complainant is the owner of a bridge across the Missouri river, extending from Hamilton, Illinois, to Keokuk, Iowa.

The Columbus, Chicago and Indiana Central Railway Company was, between 1868 and 1883, the owner of a railway, extending, 586¼ miles in length, from Columbus, by diverging lines, to Indianapolis and Chicago, with a branch line from Logansport, on the Chicago line, westward, to the boundary line of Illinois, where it connected with the Toledo, Peoria and Warsaw Railroad, about two hundred miles east of Hamilton, the east end of complainant's bridge.

Before the lease, hereinafter described, had been made, the Columbus, Chicago and Indianapolis Railway was mortgaged to James A. Roosevelt and William R. Fosdick, as trustees, to secure an issue of bonds to the amount of $15,000,000 (Record, 66, 88).

In 1869, the railway was leased in perpetuity to the Pittsburgh, Cincinnati and St. Louis Railway Company as lessee, the Pennsylvania Railroad Company entering into the lease as guarantor of the rents and covenants on the part of the lessee. (Record, 3, 24).

In 1870, this lease was modified by agreement between the parties (Record, 4, 35).

The *ninth* article of the lease was in the following words:

"ARTICLE IX.—The party of the first part here-

by assigns and transfers to the party of the second part all its right and interest in its contract of the 11th of March, A. D. eighteen hundred and sixty-eight, with the Terre Haute and Indianapolis Railroad Company *et al.*, and its contracts with the Little Miami and Columbus and Xenia Railroad Company, the Indianapolis, Cincinnati and Lafayette Railroad Company, the Indianapolis and Vincennes Railroad Company, stock-yard-track contract at Chicago, and all other of its contracts relating to other roads for transportation, copies of which are hereto annexed; and the said party of the second part assumes and agrees, at its own risk and expense, to carry out each and all said contracts according to their respective tenors and legal liabilities, receiving and enjoying all benefits to be derived therefrom, and also to indemnify and save harmless the said party of the first part on account of its indorsements on the bonds of the St. Louis, Vandalia and Terre Haute Railway Company, and the Indianapolis and Vincennes Railroad Company" (Record, p. 28).

The *fourteenth* article of the lease is in the following words (Record, 30):

"In case of default of payment of interest on the bonds or sinking fund, as before provided, for sixty (60) days after the same shall become due and payable; or in carrying out any of the provisions of this lease; or of default of the said second or third parties to do and perform any and all of the agreements to be done or performed by them, respectively, as aforesaid, for the space of four months, then the said party of the first part shall have the right to enter upon and take possession of all the property hereby leased, and all depots, shops, buildings and other permanent property added thereto; and the said second and third parties, each for itself, agrees with said party of the first part, not to hinder or prevent its entering upon and taking such possession and using all said property, for its own benefit and use, by any suit or proceeding in law or in equity or otherwise, and without prejudice as to any rights of damages which said party

of the first part may have for such default, it being understood that this lease shall terminate on the party of the first part taking possession of the demised premises, as herein provided for."

The *sixteenth* article which fixed the liability of the Pennsylvania Railroad Company was (in part) in the following words (Record, p. 31):

"Article XVI.—And the party of the third part, for and in consideration of the sum of one dollar to it in hand paid by the parties of the first and second part, the receipt whereof is hereby acknowledged, and of the benefits and advantages accruing and to accrue to it by reason of the covenants and agreements hereinbefore recited by the said parties of the first and second parts to be done and performed in the forming, maintaining and operating of a continuous line of railway in connection with the road or roads of the party of the third part, does hereby guarantee to the party of the first part that the party of the second part will, in good faith, do, keep and perform all and singular the matters and things which the said party of the second part have hereinbefore covenanted and agreed to do; and upon any failure or default of the said party of the second part to keep and perform any and all of its said covenants and agreements, that then the said party of the third part, will, upon notice to them in writing of the kind and nature of such failure or default, do, keep, and perform the same, for and on behalf of the said party of the second part."

At the date of the execution of this lease, a contract was in course of negotiation between the Keokuk and Hamilton Bridge Company and four railroad companies, of which the C. C. & I. C. Co. was one, for the use of the bridge (Record, 20).

After the execution of the lease, this contract was entered into by the C. C. & I. C. Co. at the instance and written request of the lessor and lessee companies (Record, 39).

It is upon this letter of request, and others of like import subsequently signed, upon the basis of which amendments to the bridge contract were made, as will be hereafter noted, that this litigation arises.

The first letter of request is, therefore, printed here in full (italics mine):

"COLUMBUS, OHIO, February 16th, 1869.

B. E. SMITH, Esq., Pres't C. C. & I. C. R'y Co.

Sir.—Referring to a proposed contract between the Toledo, Peoria and Warsaw Railway Company, party of the first part; the Des Moines Valley Railroad Company, party of the second part; the Columbus, Chicago and Indiana Central Railway Company, party of the third part; the Toledo, Wabash and Western Railway Company, party of the fourth part, and the Keokuk and Hamilton Bridge Company, party of the fifth part, for, among other things, the construction and use of a substantial wrought-iron bridge across the Mississippi river at Keokuk, Iowa, *which contract was under negotiation, but unexecuted* by the Columbus, Chicago and Indiana Central Railway Company at the date of the final execution of the contract and lease of your company's railroad and property to and with the Pittsburgh, Cincinnati and St. Louis Railway Company and the Pennsylvania Railroad Company, to wit: on the 29th of January, 1869, *and was not included among the contracts of your railway company assumed by the lessee under their lease from your said company.*

On behalf of the said lessee, the Pittsburgh, Cincinnati and St. Louis Railway Company, and the Pennsylvania Railroad Company, *party to said lease and contract*, the undersigned request that you will officially, as the president of the Columbus, Chicago and Indiana Central Railway Company, execute said bridge contract, it being understood that the said *lessee* and Pennsylvania Railroad Company shall assume all the liabilities

defendant companies, it was without consideration, for the bridge had already been completed, (as appears upon its face,) at the time it was written, and at the date of the execution in pursuance of its request of the bridge contract by the C. C. & I. C. Co.

A *third* letter of request, dated November 29th, 1871, preceded the execution of another amendment to the contract, which need not receive any attention here (Record, 43).

At a later date there were suits between the Pittsburgh, Cincinnati and St. Louis Railway Company and the Pennsylvania Railroad Company, of the one part, and the C. C. & I. C. Co. and Roosevelt and Fosdick of the other, with regard to the performance of the amended contract or lease, executed in 1870 (Record, 66, 67).

In one of these suits, the complainant, the P. C. & St. L. Railway Co. (defendant here,) sought to rescind and cancel the lease (Record, 68).

At the same time, by cross-bill, Roosevelt and Fosdick trustees, and as Receivers appointed in actions for the foreclosure of the mortgage which antedated the lease, sought to enforce an accounting and payment of rents under the lease (Record, 68, 69).

To this attack the present defendants responded that the lease was illegal and void, because unauthorized by the laws of the State of Indiana, and that there had been an eviction by the payment of rental into the Court *pendente lite* (Record, 69). Roosevelt and Fosdick had, as such trustees, also filed bills in the several States through which the railway ran, (Ohio, Indiana and Illinois,) to foreclose their mortgage (Record, 66).

The cause came on for hearing before Judge HARLAN in the Circuit Court, and resulted finally in a decree sustaining the lease, and whereby he dismissed the bill and decreed for Roosevelt and Fosdick upon their cross-bill.

An appeal was thereupon taken to this Court by the present defendants, and while the cause was pending here the same was settled and the appeal dismissed (Record, 69).

Roosevelt and Fosdick thereupon foreclosed their mortgage, sold the railroad at public sale;—it was bought by a purchasing committee of bondholders consisting of William L. Scott, Charles J. Osborn and John S. Kennedy;—they organized the Chicago, St. Louis and Pittsburgh Railroad Company, and conveyed the property to it, and on March 17, 1883, it took possession of the leased railroad and premises. (Record, 66, 67.)

Before this was done, viz: on July 25, 1881, (Record 8,) the suit, the decision of which is reported in 131 U. S. had been brought by the Bridge Company in equity, to compel performance of the bridge contract by the defendant companies. This resulted in a decree of the Circuit Court (HARLAN, J.), in favor of the complainant, rendered January 21, 1884, for the recovery of deficiencies in bridge earnings until to and including March 1, 1883. (Record, 168, 174). Upon appeal by the defendants, the decree was affimed, May 13, 1889, (Record, 15. Opinion by Mr. Justice GRAY, 131 U. S. 371.)

The principal defence, as the report of the case and the pleadings, which are made part of this record, show, was the invalidity of the lease.

In the Circuit Court the decree for the complainant by Judge HARLAN was without opinion. I think I have the right to assume that the ground on which that learned Judge acted, was that which he had previously upheld in his opinion in the other suit (*P. C. & St. L. R. R. Co.* vs. *C. C. & I. C. Ry. Co.* 8 Bissell, 456,) viz.: that the lease was valid.

It was, however, also claimed, by way of defence, that by reason of orders granted at an early stage of the suits for foreclosure, directing payment of net

earnings of the railway into the hands of Roosevelt and Fosdick, Trustees, as Receivers, *but without disturbing the possession of the lessee*, there came to be, at the time of final decree, and was, when the road was sold, a constructive ouster or eviction *nunc pro tunc* as of 1875. (Record, 69, 159-162.)

This Court (Mr. Justice GRAY) in 131 U. S. rejected both these defences, for the reason that the contract contained in the letters of request was independent of the lease, and did not have the effect attributed to it by counsel for the defendants, of importing the bridge contract into the *ninth* article of the lease, as if it had been originally embraced therein.

On hearing the present case, Mr. Justice WOODS decreed in the Circuit Court for complainants, from which an appeal having been taken to the Circuit Court of Appeals, that Court, after full argument and consideration, reserved the cause, upon bill, answer and replication, for the decision of two questions of law arising thereon, by this Court. Of these in their order.

ARGUMENT.

I.

The *first* question is in the following words :

"Is the Court at liberty, in view of the decision and decree in the former case between these parties referred to in the pleadings, to consider or sustain the defence of eviction pleaded in this case?"

I suppose, particularly in view of the *second* question, that this is intended to submit to this Court only the question, whether the estoppels of the former decree, if proved as pleaded, prevent

the re-examination of the controversy as sought by the defendants.

The part of the question which asks whether the Circuit Court, in view of the decision, is at liberty to "sustain" the defence of eviction requires a larger discussion, which it will be convenient to consider in discussing the *second* question submitted by the learned Circuit Court of Appeals.

The estoppels of the former decree are not to be found in the decision, but in the decree.

The decision contains sufficient reasons for affirming the decree, but of itself creates no estoppel.

Chaffe vs. *Morgan*, 30 La. An. 1307.
Girardin vs. *Dean*, 49 Tex. 243.
Garvin vs. *Garvin*, 27 So. Ca. Eq. 472.

The present defence is actual ouster by paramount title. The defence then made was, as shown by the report of argument in this Court, (131 U. S. 380), that—

"the lease and amended lease and with them all liability upon the bridge contract, were determined by eviction January 1, 1875,"

Under the rule prescribed in *Cromwell* vs. *County of Sac*, 94 U. S. 351, it cannot be said that the issues in these cases are identical, or so similar so as to create an estoppel, or prevent the defendants from setting up a defence which originated after the former case had been brought, (July 25, 1881, Record, 8,) and after the case had come to issue by replication, (September 21, 1882, Record, 155), and after the last instalment of deficiencies in bridge earnings sued for and recovered had accrued. (Record, 175, *fol.* 522.)

The defence of ouster was presented to the Circuit Court in the former case by an amended and supplemental answer filed by the P. C. and St. L.

Ry. Co., filed by leave, after the cause was at issue, (Record, 159,) but it will be observed that this answer does not set up an actual ouster and dispossession prior to the dates at which the instalments recovered in that cause matured.

On the contrary, it claims the appointment of Roosevelt and Fosdick, as Receivers (Record, 160,) and the conveyance to them of the premises in 1875, and "afterwards" (without specific date, (Record, 161,) the entry of decrees for the sale of the railway premises.

"with the right to the purchaser to affirm or disaffirm the lease."

This answer avers further the sale of the railway property, with the right to affirm or disaffirm the lease, on January 10, 1883, to Scott, Kennedy and Osborn,

"for a smaller sum than the debt secured by the mortgage, and afterwards"—

by concurring decrees in the foreclosure suits, confirmations of sale, and conveyance by the commissioners in Chancery who had been appointed to make it, that—

"thereafter, on February 21, 1883, said purchasers notified this defendant in writing that they disaffirmed said lease, and thereby said lease came to an end, and was avoided and ceased to have any legal force and efficacy whatever." (Record, 161.)

That other decrees were entered by which the unpaid net earnings of the railway were ordered to be paid over to the purchasers.

That (no date named,) (Record, 162,)

"in accordance with said decrees possession of said railroad property, rights and franchises has been

surrendered to the said purchasers, and that it has been wholly ousted and evicted from all and singular the premises, rights and franchises leased to it as aforesaid, and it relies upon the cancellation of said lease and the ouster and eviction as aforesaid, as a full and perfect answer to the relief sought in the bill and amended bill and complaint filed in this Court."

The issue in the present case is created by the averment of the amended several answer of the defendants, which states, (Record, 65,) that :—

"The Pittsburgh Company remained and was in undisturbed possession of the railroad property and premises so as aforesaid alleged to have been leased to it, by the Columbus Company to and until the seventeenth day of March, 1883, when it was wholly dispossessed of the same, and evicted therefrom, and from all rights under said alleged lease and amended lease and contract by the Chicago, St. Louis and Pittsburgh Railroad Company, to which the same had been conveyed by William L. Scott, Charles J. Osborn and John S. Kennedy, who had purchased the same at judicial sale under the decree of foreclosure described in said bill of complaint, and to whom the said title had been confirmed and ordered by this Court to be conveyed accordingly, etc."

The amended answer in the present case also avers, (Record, 66,) that the interlocutory decrees appointing Roosevelt and Fosdick, Receivers, and directing conveyances to be made to them—

"were and each of them was subject to the direction and qualification that, until further order of the said Court therein, said receivers should not disturb the possession of the said mortgaged premises, by the said Pittsburgh Company under the lease thereof, but should collect and receive the rental payable by said Pittsburgh Company or by the Pennsylvania Company, the guarantor in said lease mentioned, under and in pursuance to the

provisions of said lease, and should apply the same in such manner as should be provided by the further order of said Court."

And by the same pleading it is further averred that during the prosecution of the foreclosure suits, no order was made at any time that the Receiver should disturb the possession of said mortgaged premises by said Pittsburgh Company—

"until and unless the decrees for the confirmation of said sale, and for the making of said deed to said Scott, Osborn and Kennedy, purchasers aforesaid, and that they be put in possession of said mortgaged premises so by them purchased with the right to affirm or disaffirm said lease or amended lease, and their disaffirmance thereof, which lease and amended lease they did on or about March 1, 1883, disaffirm and not sooner, be held to be orders disturbing the possession of said Pittsburgh Company; but on the contrary, said Pittsburgh Company continued in peaceable possession of said premises until the eviction hereinbefore described of the seventeenth day of March, 1883, as aforesaid."

It is further averred by said amended answer, (Record, 68,) that in the suit brought by the Pittsburgh, Cincinnati and St. Louis Railway Company, (called in the pleadings for convenience Pittsburgh Company,) to avoid the lease, a cross-bill was filed by Roosevelt and Fosdick for an accounting and collection of the rent then due and to grow due during the pendency of the said cause—

"That the said Pittsburgh Company and the said Pennsylvania Railroad Company duly appeared and answered said cross-bill, and in their said amended bill and also by way of answer to said cross-bill, set up and averred the aforesaid orders for payment of rental into Court, and the execution thereof, by compliance wherewith, by said Pittsburgh Company, as constituting an eviction of said

Pittsburgh Company of and from the leased premises aforesaid. That thereupon such proceedings were had that the cause came on for final hearing, when it was finally ordered and adjudged by said Court that the same did not constitute an eviction of the said lessee from the said premises, and the complainants in the said cross-bill recovered accordingly, from which final decree appeals were duly taken by the said Pittsburgh Company and the said Pennsylvania Company, respectively, to the Supreme Court of the United States, which appeals * * * afterwards * * * were dismissed, whereby the said final decrees affirming that the making and enforcement of said orders for payment of said rental were not an eviction of the said lessee from the said demised premises became, were and are valid and binding decrees in equity, and wholly unreversed, all which was fully shown in said cause in chancery instituted by said complainant in this Court, as aforesaid."

It thus appears that there is no foundation whatever for the claim of estoppel in this cause. The defence now made, if good in law or equity, has not been waived nor its force and efficiency destroyed by the action of this Court or the Circuit Court in the former case nor could it have been.

The ouster, pleaded as a defence in that case, occurred when the receivers were appointed, and conveyances made to them, limited by the qualification that they should not disturb the possession of the lessee company.

It was claimed in the former case that the subsequent sale, confirmation, disaffirmance of lease and dispossession, all which occurred before decree, but after the case was at issue, and after the last instalment of bridge deficiencies then sued on and recovered had accrued, related back by force of the final dispossession, which took place March 17, 1883, after the sale and confirmation and conveyance, to the date at which the Court had first inter-

fered with the course of events by appointment of receivers and conveyances to them, although such order was with the restriction that possession of the lessee should not be disturbed.

However weak or strong that argument may have been, it certainly was upon an issue wholly unlike that in the present case.

A simple test is to ask a single question. The defendant companies have paid under the affirmance by this Court of the decree of the Circuit Court, the entire amount of bridge deficiencies accruing up to and including the first day of March, 1883, no later. Is it possible that the decree which required this is an estoppel to a defence which originated on the 17th of March, 1883?

Is it possible that a defence, which admitted the continued possession of the Pittsburgh, Cincinnati and St. Louis Railway Company, lessee, having been found to be ill taken, the decree overruling it is an answer to a defence that at a later date the Pittsburgh, Cincinnati and St. Louis Railway Company were under paramount title deprived of such possession?

There is another and an equally conclusive answer to the estoppel suggested in this case which will be found by reading the bill in the former case, which is brought into the present record by the averments of the bill and amended answer and as an exhibit to the amended answer (Rec. 76–91).

It is proper first, however, to explain that the amended answer undertook to present by exhibit the whole record of the former case, but inasmuch as Exhibits A, B, C, D, E and F to the bill in the former case were identical with the exhibits identified by the same lettering to the bill of complaint in the present case, they were not reprinted among the exhibits to the amended answer.

If the Court will take Exhibits A, B, C, D, E and F to the bill in the present case, printed from pages 20 to 44, of the Record, with the exhibits to the amended answer printed from pages 76 to 175, they will have the whole record of the former case before them.

The reading of this bill will satisfy the Court that it was brought to enforce the *ninth* and *sixteenth* articles of the lease and the assumption of liability contained in the letters of request as part of the *ninth* article, and not upon the theory of independent contract.

Undoubtedly the opinion of this Court is authority. What I contend for is only that it does not work by way of estoppel. The theory of independent contract although considered by counsel and finally adopted by this Court was not that of the pleadings in the former case.

It appears only as a reason for affirmance. It is possible, (this is not said by way of admission,) that by the use of an erasing pen and knife, the pleadings in the former case might be cut down so that words in it selected here and there could be found, out of which might be spelled an averment of independent contract. If this had been so, it would have been the duty of the Bridge Company to have sued at law in Illinois.

This was held by this Court in *Union Mutual Life Insurance Co.* vs. *Hanford*, 143 U. S. 187.

The Bridge Company saw fit to go into equity. Its theory as presented to the Circuit Court is to be found in the bill and exhibits. It is that the letters of request induced action which incorporated the bridge contracts into the lease, precisely as if they had been named and enumerated in its *ninth* article, and that complainant was entitled to recover on that theory from the P. C. & S. L. Co. and as against the Pennsylvania Railroad Company by force of the *sixteenth* article of the lease.

No one can read Mr. Carnegie's notice to President Roberts, (Exhibit H. to former bill, Record, 106,) without seeing that its purpose and effect were to make a case against the Pennsylvania Railroad Company under the lease.

If there be any estoppel, therefore, it is one denying to the complainant the right to aver that it recovered by force of any independent contract. So far as estoppels go, this is the necessary result of the pleadings. I do not mean by this to deny that this Court, treating the contract as independent of the lease in the sense which we shall hereafter consider, were right in affirming, although the pleadings placed the plaintiff's claim upon a different ground. When the cause came before this Court there had been a recovery, a recovery, which, as this Court held, there was shown to be no meritorious or sufficient ground for disturbing. This is not a moot Court, and therefore, as your Honors found that on the theory of independent contract, the complainant was entitled to recover, you were bound to affirm, even though the complainant had not put its case in the pleadings on that ground, but had claimed to recover in equity by enforcing the *ninth* and *sixteenth* articles of the lease. But the complainant having gone into equity to enforce this lease to the extent of deficiencies in bridge earnings the last item bearing date March 1, 1893, and having secured its money by the decision of this Court that the contract was independent of the lease, is, in no position now to affirm that the record constitutes an estoppel preventing the defendants from repeating the very statements it had made in its bill. This we are far from doing, because, as will be seen presently, what we are contending for here now is, not as complainant in effect contended in its former bill that the bridge contract is part of the lease, but that the lease is part of the contract.

II.

The *second* question of the Circuit Court of Appeals is in the following words (Record, 178):

"Are the contracts between the bridge company and the appellants so independent of the lease that they would not be affected nor the defendant railway companies released from liability thereunder by termination of the lease by eviction or otherwise?"

(*a.*) That eviction by paramount title terminates a lease is the established law of the land. One of your Honors (Mr. Justice JACKSON) decided this proposition in *Moran* vs. *P. C. & St. L. Co.* 32 Fed. Rep. 878.

It was held in *Smith* vs. *Shephard*, 15 Pick. 147, that—

"A mortgagor in possession made a lease for years, reserving rent. Afterwards, the mortgagee, having a paramount title, entered, as he lawfully might, with right to take the rents and profits. In a suit by lessor against lessee for rent, such entry, under a paramount title, was held to be an ouster, and a good bar to the action."

See also *Morse* vs. *Goddard*, 13 Met. 177.

Whether it be pertinent or not to the debate invited by the Circuit Court of Appeals in this case, it is quite true that, unless the eviction were collusive or simulated merely and not real, as is averred by the bill, (Record, 17,) and denied by the amended answer, (Record, 72,) the lease in question has long since ceased to exist, and there was on or about the 17th day of March, 1883, an eviction by paramount title founded on the mortgage to Roosevelt and Fosdick, which ante-dated the lease.

In all bi-lateral contracts, such as this lease is,

every promise of one party is a consideration for each promise of the other. It follows, therefore, that when this lease was dissolved by eviction, the liability of the lessor and guarantor to perform contracts assumed in the *ninth* article of the lease ceased and determined.

Now comes the query submitted by the learned Circuit Court of Appeals. What effect did this determination of the lease—March 17, 1883—this eviction by paramount title, have upon the right of the complainant to collect instalments of bridge deficiencies maturing at later dates? Is the lessee company bound to go on paying and the guarantor company obliged to stand as security for bridge deficiencies for all time to come? They really never had any interest in the premises, for the simple reason that they never had the opportunity to use the bridge, the original contract not having bound them to pay deficiencies, except in proportion to such use, and the amended contract, which bound them, or, to use the more exactly descriptive colloquial language of the day, "stuck them," with liability for one-fourth of the deficiencies of the bridge to earn its mortgage interest, having been made after the bridge was completed. But apart from this, which is the moral ground upon which the defendants stand in this discussion, we reach the question, What was meant by the reference to the lease contained in the letters of request? If nothing, then I admit that my clients are, and will be, required to help maintain this bridge, within two hundred miles of which their railroad lines do not reach, for all time to come; but I respectfully submit that this Court held to the contrary, in 131 U. S. and that the contract requires a contrary conclusion.

I also respectfully urge, as worthy of very much consideration in this argument, that my very

learned and highly respected adversaries are, by the necessities of their case, compelled to omit or ignore a large portion of the letter of request, as if it had not been written, and that such action of theirs is a violation of a fundamental canon in the construction of contracts, viz: that every intelligible word of a contract is entitled to some force and effect, and that the office of construction is to assign its proper force and effect.

(*b.*) For the purpose of making this position clear, I print in parallel lines the contract as drawn by the parties, and as sought to be enforced by my learned adversaries. The two letters of request are in effect substantially alike. I therefore reprint here only the first:—

"COLUMBUS, OHIO, February 16, 1869.

B. E. SMITH, Esq., Prest. C., C. & I. C. Ry. Co.,

Sir.—Referring to a proposed contract between the Toledo, Peoria and Warsaw Railway Company, party of the first part; the Des Moines Valley Railroad Company, party of the second part; the Columbus, Chicago and Indiana Central Railway Company, party of the third part; the Toledo, Wabash and Western Railway Company, party of the fourth part, and the Keokuk and Hamilton Bridge Company, party of the fifth part, for, among other things, the

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construction and use of a substantial wrought-iron bridge across the Mississippi river at Keokuk, Iowa, which contract was under negotiation, but unexecuted, by the Columbus, Chicago and Indiana Central Railway Company, at the date of the final execution of the contract and lease of your company's railroad and property to and with the Pittsburgh, Cincinnati and St. Louis Railway Company, and the Pennsylvania Railroad Company, to wit, on the 29th of January, 1869, and was not included among the contracts of your railway company assumed by the lessee under their lease from your said company.

On behalf of the said lessee, the Pittsburgh, Cincinnati and St. Louis Railway Company, and the Pennsylvania Railroad Company, party to said lease and contract, the undersigned request that you will officially, as the president of the Columbus, Chicago and Indiana Central Railway Company, execute said bridge contract, it being understood that the said

construction and use of a substantial wrought-iron bridge across the Mississippi river at Keoknk, Iowa, which contract was under negotiation, but unexecuted, by the Columbus, Chicago and Indiana Central Railway Company, at the date of the final execution of the contract and lease of your company's railroad and property to and with the Pittsburgh, Cincinnati and St. Louis Railway Company, and the Pennsylvania Railroad Company, to wit, on the 29th of January, 1869, and was not included among the contracts of your railway company assumed by the lessee under their lease from your said company.

On behalf of the said lessee, the Pittsburgh, Cincinnati and St. Louis Railway Company, and the Pennsylvania Railroad Company, party to said lease and contract, the undersigned request that you will officially, as the president of the Columbus, Chicago and Indiana Central Railway Company, execute said bridge contract, it being understood that the said

lessee and Pennsylvania Railroad Company shall assume all the liabilities and obligations, and be entitled to all the benefits of said bridge contract.

Respectfully yours,
(Signed) T. L. JEWETT,
President, Pittsburgh, Cincinnati & St. Louis Railway Company.

Approved:
(Signed)
J. EDGAR THOMSON,
President, Pennsylvania Railroad Co."

lessee and Pennsylvania Railroad Company shall assume all the liabilities and obligations, and be entitled to all the benefits of said bridge contract, *the same as if it had been specifically named and made a part of the 9th article of the said lease and contract of the Columbus, Chicago and Indiana Central Railway Company, to and with the Pittsburgh, Cincinnati and St. Louis Railway Company and the Pennsylvania Railroad Company, bearing date the 22d of January, 1869.*

Respectfully yours,
(Signed) T. L. JEWETT,
President, Pittsburgh, Cincinnati & St. Louis Railway Company.

Approved:
(Signed)
J. EDGAR THOMSON,
President, Pennsylvania Railroad Company."

In making this comparison by the use of the "deadly parallel," I have taken as little liberty as possible with the contract.

The fact is, however, that the reference to the contract as under negotiation, but not executed, and therefore not included in the assumed contracts enumerated in the *ninth* article of the lease, has no pertinence to this letter, if treated as a contract so independent of the lease that the provisions of the lease are not to be considered as incorporated into the letter of request, which is the contract

between the present parties. Nor is the designation of the P. C. & St. L. Co. as "lessee," and of the Pennsylvania Railroad Co. as "party to said lease and contract." If intended as a letter of request to execute an independent contract, without reference of any kind to the lease, the following would have been all that was necessary or proper :

"Referring to a proposed contract between the Toledo, Peoria and Warsaw Railway Company, party of the first part; the Des Moines Valley Railroad Company, party of the second part; the Columbus, Chicago and Indiana Central Railroad Company, party of the third part; the Toledo, Wabash and Western Railway Company, party of the fourth part, and the Keokuk and Hamilton Bridge Company, party of the fifth part, for, among other things, the construction and use of a substantial wrought-iron bridge across the Mississippi river at Keokuk, Iowa;—on behalf of the Pittsburgh, Cincinnati and St. Louis Railway Company, and the Pennsylvania Railroad Company, the undersigned request that you will officially, as the President of the Columbus, Chicago and Indiana Central Railway Company, execute said bridge contract, it being understood that the said Pittsburgh, Cincinnati and St. Louis Railway Company and Pennsylvania Railroad Company shall assume all the liabilities and obligations and be entitled to all the benefits of said bridge contract."

The minds of the parties were confronted by this state of facts : By the *ninth* article, the lessee had assumed performance of the outstanding and existing contracts of the C. C. & I. C. Ry. Co.—a very proper and reasonable provision in a lease which was to run ninety-nine years renewable forever. But the lease contained a self-determining clause, (Art. 14, *ut supra*,) taking effect in case of forfeiture for non-payment of rent or non-performance of covenants. The assumption, contained in the *ninth* article, could therefore be of no greater duration than

the term of the lease itself. It would be absurd to hold, unless there were express provision in the lease to the contrary, that any of its covenants could outrun and last longer than the duration of the demised term itself.

The hypothesis of a lease is that not only the term, but all the covenants of lessor and lessee, depend upon the will of the lessor, if the period ever arrive at which he may at his option forfeit the lease. If he forfeit, and take possession under his paramount title, then not only is the term determined, but all the conditions and qualifications and covenants of the lease cease; otherwise we should be in a fine state of confusion in the United States, where companies operating railroads under leases are bound by very many covenants, but are not always managed successfully so as to avoid forfeiture.

The earlier parts of the letters of request cannot, however, be omitted from consideration with safety. They serve to explain why the letters were written. They were the result of the delay in the negotiation between the parties for the use of the bridge, which prevented the inclusion of this among the contracts enumerated in the *ninth* article. But omitting this from further consideration, and assuming the opposite theory, viz., that this delay was given as a reason for non assumption, so as to create a more perfect separation of the bridge contract from those named in the *ninth* article, we reach the more important question: Why did the letter of request, (both letters,) use the following language:

"The same as if it had been specifically named and made a part of the *ninth* article of the said lease and contract of the Columbus, Chicago and Indiana Central Railway Company to and with the Pittsburgh, Cincinnati and St. Louis Railway Company and the Pennsylvania Railroad Company, bearing date the 22d of January, 1869."

What was to be "the same"? It was the assumption by the lessee and the Pennsylvania Railroad Company. They were to—

"assume all the liabilities and obligations and be entitled to all the benefits of said bridge contract, *the same* as if it had been specifically named and made a part of the *ninth* article of the said lease."

The question has been, as I understand it, already answered by this Court. My learned adversaries are not at liberty to omit these words or to say that "the same" means nothing, or to treat the letter of request as if these words were not in it.

Their proper force and effect must be assigned to these words. This office on my theory of the case is easily performed. In the first place, this Court has said (131 U. S. 387), in the language of Mr. Justice GRAY (italics mine):

"The reference in that request and agreement to the *ninth* article of the lease was *for the purpose of defining the extent of the liabilities and benefits assumed*, and perhaps of indicating that the Pittsburgh Company alone was bound as principal, and the Pennsylvania Company as guarantor only; but it did not make the bridge contract a part of the lease."

How can this be done? In one way only I respectfully submit to your Honors, viz.: by treating the letters of request as if all pertinent parts of the lease had been incorporated into them. I do not claim as in the former case (respect for and obedience to the decision of this Court in 131 U. S. prevents), that the bridge contract is by the letter of request written into the lease.

This Court held otherwise in the very sentence last quoted. Had that been true, the invalidity of the lease, about which, considering the decisions of this Court as to the want of power of an Indiana

Railroad Company to lease its road, there cannot be any question here, would have prevented its enforcement; certainly prevented its enforcement in equity as was sought in the bill in the former case.

But the contract not having been written into the lease by this language, what is the "*extent*" of the obligation of the defendant companies to assume the liabilities and obligations, and their right to the benefits of the bridge contract—

"the *same* as if it had been specifically named and made a part of the *ninth* article of the said lease and contract"?

If it "(the bridge contract) had been" specifically named and made a part of the *ninth* article, would it be possible to hold that its obligations and benefits survived the extinguishment of the lease by ouster under paramount title?

Mr. Justice GRAY says that we are to refer to this language to define—or to use his words—

"for the purpose of defining the extent of the liabilities assumed."

What is meant, unless this, viz.: that the liability assumed by the execution of the contract, in pursuance of the letter of request, was precisely "the same," in all respects, including duration, as if it had been—

"named and made part of the *ninth* article, although it was not thereby made part of the article?"

Had it been "named and made part of the *ninth* article," its obligation would have ceased on the 17th day of March, 1883.

The "extent" of the liabilities assumed, as Mr. Justice GRAY says, being defined by this reference,

we find that the liabilities can not extend beyond the date at which the contract perished. If the reference in this letter of request means anything else, what does it mean?

It would be bad manners to put a conundrum to this Court. But this is not a conundrum, but a serious and necessary question, and until answered satisfactorily to the mind of the Court, my contention cannot be rejected.

If this contract has survived the extinguishment of the lease by eviction under paramount title, then it is because the reference to the *ninth* article, which is –

"for the purpose of defining the *extent* of the liabilities,"

is not sufficient, for some reason or other, to define the "extent" of duration of the term, and the conditions of its possible forfeiture.

What else is it sufficient for? This part of this debate has reference wholly to the P. C. & St. L. Ry. Co. I am aware that Mr. Justice GRAY also says that this is "perhaps" for the purpose of fixing the terms upon which the Pensylvania Railroad Company may be held liable as guarantor. Here we find a reference permitted by the learned Judge to the lease, and that which, it is respectfully submitted, amounts to the incorporation, so far as the Pennsylvania Railroad Company is concerned, of its *Sixteenth* Article into this bridge contract. Surely, on this theory, the Pennsylvania Railroad Company, as guarantor of the lease, can not be held liable without the notice in writing specified in the *sixteenth* article of the lease, and, if not, it must be because the reference to the lease, contained in the letter of request, being for the purpose of "defining the extent of the liabilities assumed," the law imports into the bridge

contract, by this reference, that which is equivalent to a specification of the limited character of the obligation assumed by the Pennsylvania Railroad Company, that is to say, its obligation to pay, not as principal but as surety, nor until after notice founded on the default of the principal obligor.

It being thus established by this Court that the reference to the *ninth* article of the lease and to the lease itself imports into this contract, as a limitation of the liability of the Pennsylvania Railroad Company, the provisions of the *sixteenth* article of the lease, why should not the *fourteenth* article for the forfeiture and re-possession by the lessor in case of non-performance by lessee, which thus limits the duration of the term, be likewise imported into the contract, and why should not the effect of ouster by paramount title be the same in this case as in the other? How could the Pennsylvania Company be discharged, if the *sixteenth* article were not complied with, but liable after the *fourteenth* had terminated the lease itself?

A pertinent question, the answer to which, it seems to me, will determine the true course to be prescribed in answering the Circuit Court of Appeals is this: Assuming, as this Court said, that the reference to the *ninth* article of the lease—

"was for the purpose of defining the *extent* of the liabilities and benefits assumed,"

in what particular does it define the extent of the liability? Certainly it does not define the *amount* of liability of the lessee and guarantor. That is fixed by the amount due by the C. C. & I. C. Co. Nor the conditions upon which such liability is based. They are specified in the bridge contracts, performance of which is assumed. Nor the

time and date of payment. The bridge contracts themselves settle that.

I respectfully submit that the word "extent," used by his Honor, can refer to nothing but the duration or length of the term of time during which, by the letter of request, the presidents of the appellant companies, for their corporations, assumed liability.

If the words of the assumption had been unqualified, or as follows:

"The undersigned request that you will officially, as president of the Columbus, Chicago and Indiana Central Railway Company, execute said bridge contract, it being understood that the P. C. & St. L. and Pennsylvania Railroad Companies shall assume all the liabilities and obligations, and be entitled to all the benefits of said bridge contract",—

if this had been all, the words "the same," etc. and all reference to the lease having been omitted, or if the reference to the lease had been by way of description only, then certainly, having assumed the contracts once, the defendant companies assumed them for all time. But as they failed to assume without conditions or qualification, but did attach a condition, viz.:

"the same," etc.,

they meant that the liability was assumed, with the same extent of duration, as if it had been another of the contracts embraced within the assumption contained in the *ninth* article. If there be an answer to this, my learned adversaries have failed to suggest it, and it is hoped and desired that your Honors will find and state it.

(*c.*) The only answer to the foregoing, I have

ever heard to the date of writing this brief, is founded upon what is supposed to have been in Mr. Justice GRAY'S mind, and that of this Court, when the following was written in the opinion in 131 U. S., to be found at page 390 (italics mine):

"The *sole* ground of our decision is that the bridge contract is independent of the lease, and is valid and binding as between the parties to this suit, whether the lease is valid or invalid. *This being so, the question argued at the bar, whether the appellants, by reason of eviction, are no longer liable on the lease, becomes immaterial;* and the judgment of the Circuit Court in a former suit, affirming the validity of the lease, has no effect upon our decision, for the same reason, as well as because the Bridge Company was not a party to that judgment, and therefore neither bound by it nor entitled to the benefit of it."

If the learned Justice, who wrote these words, meant to say that the bridge contract was so independent of the lease that the assumption of liability referred to in the letter of request would continue after the valid lease had been terminated by a valid eviction, then I respectfully submit that the "sole ground" of the Court's decision could not have been that the bridge contract was independent of the lease, and "valid and binding" "whether the lease was valid or invalid," but that it was independent of the lease and "valid and binding" even after the valid lease had terminated by the operation of a condition subsequent.

But it must be remembered that the eviction before the Court in the former case was not of the character now presented. That was a constructive eviction pleaded *nunc pro tunc*, and sought to be established as of a date when the lessee was in possession with all the benefits of such possession.

The present eviction was actual, of later date,

founded on paramount title, and from its date absolutely excluded the lessee and guarantor from all the benefits of the lease. To this defence, it is immaterial whether the lease was valid or invalid. It is urged, on the assumption that the lease was, is and remains valid, but has been determined in consequence of its own provisions for forfeiture, and of the general rule of law that ouster by paramount title puts an end to a lease.

It is manifest that what the learned Justice had in his mind, (and this is all by which he or the Court is bound, *Woodruff* vs. *Parham*, 8 Wall. 138,) was the alleged invalidity of the lease; otherwise his sentences would be contradictory, or at least inconsistent. If it were—

"the *sole* ground of our decision * * * that the bridge contract is independent of the lease, and is valid and binding as between the parties to this suit, whether the lease is valid or invalid,"

then it could hardly be possible that a lawful eviction of the lessee holding under a valid lease was, in the same case, considered "immaterial." For the eviction of such lessee, by ending the lease, only avoids *further* liability under it, but by no means renders it invalid. Upon the question of eviction, the validity or invalidity of the lease is immaterial. While it is perfectly true, and consistent with the whole opinion, to hold that whether the lease was valid or invalid became "immaterial," after it had been ascertained that the contract was independent of the lease, this language does not suggest that an invalid lease might not be referred to and its provisions incorporated into a valid and independent bridge contract, nor that a contract independent of the lease might not refer to it "for the purpose of defining the extent of the liabilities and benefits assumed."

No such thought was, I respectfully submit, in the mind of the learned Justice. On the contrary, in the passage quoted from page 387, he expressly repudiates this idea by holding in effect that the reference to the *ninth* article of the lease was for the very purpose of incorporating the provisions of the lease, whether valid or invalid, into the contract at least sufficiently to define the extent of the liabilities assumed and rights acquired.

For these reasons, I respectfully submit that the *first* question put by the Circuit Court of Appeals should be answered in the affirmative, and the *second* in the negative.

New York City, March 15, 1894.

GEO. HOADLY,
Of Counsel for Appellants.

IN THE

SUPREME COURT OF THE UNITED

OCTOBER TERM, 1893.

No. 1112.

The Pittsburgh, Cincinnati and St. Louis Railway Company and The Pennsylvania Railroad Company,

vs.

The Keokuk and Hamilton Bridge Company,

On a Certificate from the United States Circuit Court of Appeals for the Seventh Circuit.

BRIEF FOR APPELLEE.

L. & P. THUMBULL,

Of Counsel for Appellee.

Supreme Court of the United States.

OCTOBER TERM, 1893.

No. 1112.

The Pittsburgh, Cincinnati and St. Louis Railway Company and The Pennsylvania Railroad Company,

Appellants,

vs.

The Keokuk and Hamilton Bridge Company,

Appellee.

On a Certificate from the United States Circuit Court of Appeals for the Seventh Circuit.

BRIEF FOR APPELLEE.

This cause comes before this court upon a certificate from the Circuit Court of Appeals of the Seventh Judicial Circuit, certifying that "there arose upon the pleadings in "this cause, certain propositions of law concerning which "the instruction of the Supreme Court of the United States "is desired.

"And because this court is in doubt whether, in view of "the decision of the Supreme Court of the United States "in the cause between the parties hereto, referred to in "the pleadings, and reported in 131 U. S. reports, 371, it "is at liberty to consider or sustain the eviction pleaded in "this case as a valid defense to the claim of the appellee,

"and whether the contracts with the bridge company "could be avoided by any transaction with respect to the "lease;

"It is therefore ordered that the pleadings in this case, "to wit: the bill, the amended answer, and the replication "be certified to the Supreme Court of the United States "for its opinion and instruction upon the following "questions:

1. "Is this court at liberty, in view of the decision and "decree in the former case between these parties, referred "to in the pleadings, to consider or sustain the defense of "eviction pleaded in this case?

2. "Are the contracts between the Bridge company "and the appellants so independent of the lease that they "would not be affected, nor the defendant railway com- "panies released from liability thereunder by termination "of the lease by eviction or otherwise?"

To a proper solution of these questions, a knowledge of the circumstances under which the bridge contracts were entered into, of the objects had in view by the appellants in entering into them, and of the proceedings in the former suit, as shown by the pleadings certified to this court, is essential. They show that, in 1869, the Pennsylvania Railroad Company was seeking to secure a larger share of traffic from the west; that the rapid progress made by the Union and Central Pacific railroads, indicated the completion of a railroad line across the continent during the ensuing summer, and that when opened throughout the Pennsylvania railroad and its connections would present the shortest line to and from the great cities on the Atlantic seaboard, either by way of Chicago, St. Louis,

or by an intermediate route from Keokuk, Iowa, connecting with the Union Pacific road near Fort Kearney.

The Pennsylvania Railroad Company, whose lines reached from the Atlantic seaboard to Pittsburgh, had previously obtained control of the Pittsburgh, Cincinnati and St. Louis railway, hereinafter called the Pittsburgh Company for brevity, extending from Pittsburgh to Columbus, Ohio, and through the latter company, of the Columbus, Chicago and Indiana Central railway, hereinafter called the Columbus Company, reaching from Columbus to the Illinois state line, where it connected with other roads extending across Illinois to Hamilton, on the east side of the Mississippi river, opposite Keokuk, Iowa. From Keokuk other roads west of the Mississippi river made connections reaching across the continent.

It became important to the Pennsylvania Railroad Company in order to secure to itself a fair share of the large traffic that would be carried between the Atlantic and Pacific states, that there should be a railroad bridge across the Mississippi river at Keokuk, connecting the roads terminating on the east and west sides of the river at that point. At the time the Pittsburgh Company took control of the Columbus railway, a proposition for building such a bridge was pending between the Toledo, Peoria and Warsaw Railway Company, party of the first part, the Des Moines Valley Railroad Company, party of the second part, the Columbus Company, party of the third part, the Toledo, Wabash and Western Railway Company, party of the fourth part, and the Keokuk and Hamilton Bridge Company, party of the fifth part. The Keokuk and Hamilton Bridge Company was a corporation formed under the laws of the States of Iowa and Illinois, for

the purpose of constructing, maintaining, and operating a railroad and wagon bridge across the Mississippi river between Keokuk, Iowa, and Hamilton, Illinois, and connecting the same by railroad or otherwise with any road or roads, railroad or railroads, terminating or approximating to such point within the State of Illinois or the State of Iowa. Authority to construct the bridge had previously been given by act of Congress.

The Pennsylvania Railroad Company and the Pittsburgh Company, which it controlled, seeing the importance of the construction of such a bridge, requested the Columbus Company, on their behalf, to complete the contract for its erection, agreeing to "assume all the "liabilities and obligations and be entitled to all the bene- "fits of said bridge contract the same as if it had been "specifically named and made part of the ninth article of "the lease and contract of the Columbus, Chicago and "Indiana Central Railway Company to and with the "Pittsburgh, Cincinnati and St. Louis Railway Com- "pany and the Pennsylvania Railroad Company, bearing "date the 22d of January, 1869."

In pursuance of this request the Columbus Company executed the contract which had been pending before the execution of the lease. At the time of its execution the Columbus Company had surrendered up its railway to the Pittsburgh Company for a period of ninety-nine years, renewable forever, and was simply made use of by the Pittsburgh and Pennsylvania companies to procure on their behalf the construction of the bridge, which had been in contemplation before the execution of the lease. In accordance with the contract thus entered into between the railroad companies and the bridge company,

the latter company proceeded to construct the bridge at the expense of about a million dollars, each of the four contracting railroad companies agreeing that the receipts from freight traffic over the bridge, according to an agreed upon schedule, should net the bridge company at least forty thousand dollars every six months, a sum sufficient to pay the interest on a million dollars at the rate of eight per cent., which was the estimated cost of the bridge. Each railway company agreed by an amendment modifying the original bridge contract, that in case of any deficiency in the net receipts necessary to make up the forty thousand dollars every six months, it would contribute one-fourth of such deficit.

The bridge was constructed according to the contract, and the railroad companies entered upon its use in June, 1871. The Pittsburgh Company after paying one-fourth of the deficit for a number of years refused to do so after September, 1874. July 25, 1881, suit was brought by the bridge company against the Pittsburgh and Pennsylvania companies to recover deficits then due, and such as might become due during the pendency of the suit. The bill required answers under oath.

Among other defenses interposed to said bill by the appellants was the following:

That the Columbus, Chicago and Indiana Central Railway Company, defendant herein, and the owner of the line described in the leases mentioned in complainant's bill, dated respectively January 22, 1869, and February 1, 1870, had not on said dates authority or power by the laws of the State of Indiana to execute any such lease and contract for the demise and lease of its railroad within the State of Indiana to this defendant. (Rec., 157.)

The Pittsburgh Company also set up in a sworn amended and supplemental answer the following:

"And by way of supplemental answer, this defendant says that heretofore, in the year 1875, proceedings were commenced for the foreclosure of the mortgage, described in the original bill of complaint as antedating the execution of said bridge contract, being the same mortgage the existence of which is admitted in its further answer filed herein by the trustees, to whom said mortgage had been given, namely, James A. Roosevelt and William R. Fosdick, in the Circuit courts of the United States for the Northern district of Illinois, the district of Indiana and the Southern district of Ohio, against the said Columbus, Chicago and Indiana Central Railway Company and others, and that such proceedings have been had in said causes, said Columbus, Chicago and Indiana Central Railway Company, and all other parties named as defendants, having been made such by proper process; that said Roosevelt and Fosdick were appointed and qualified as receivers of all and singular the said mortgaged premises, rights, franchises and all income of the said Columbus, Chicago and Indiana Central Railway Company, and in obedience to orders of said Circuit courts, made in the premises, said last-named company, by deeds duly executed, afterwards, on May 25 and on August —, 1875, duly conveyed said mortgaged premises, rights and franchises, and said income, to said Roosevelt and Fosdick, and afterwards decrees were entered therein for the sale of the railway property, rights and franchises of the said Columbus, Chicago and Indiana Central Railway Company, with the right to the purchaser to affirm or disaffirm the lease of said railway to this defendant, of which lease the Pennsylvania Railroad Company is guarantor, described in the original bill of complaint filed in this cause.

And said railway property, rights and franchises, with said right to affirm or disaffirm said lease, were sold upon the 10th day of January, 1883, to William L. Scott, John S. Kennedy and Charles J. Osborn, for a smaller sum than the debt secured by said mortgage; and, afterwards, by concurrent decrees of all of said courts in said fore-

closure proceedings, said sale was confirmed, and full payment having been made for said purchase, afterwards the officers making such sale, namely, William P. Fishback, master in chancery of the Circuit court of the United States for the district of Indiana, and Jacob D. Cox, appointed special master commissioner for the purpose of making such sale by the Circuit court of the United States for the Southern district of Ohio, Western division, were ordered to and did convey all the railroad property, rights and franchises of said Columbus, Chicago and Indiana Central Railway Company, together with said right to affirm or disaffirm said lease to said Scott, Kennedy and Osborn, in fee simple. Thereafter, on February 21, 1883, said purchasers notified this defendant in writing that they disaffirmed said lease, and thereby said lease came to an end and was avoided, and ceased to have any legal force and efficacy whatever.

And by other decrees of the Circuit court for the District of Indiana, made and entered in said cause, wherein this defendant was plaintiff and said Columbus, Chicago and Indiana Central Railway Company and said Roosevelt and Fosdick and others were defendants, it has been ordered to pay over all unpaid net earnings of said railway to said purchasers, Scott, Osborn and Kennedy, and that said decrees are in full force, and this defendant is bound to and will execute the same, and has begun and entered upon theexecution thereof.

And this defendant further avers that, in accordance with said decrees, possession of said railroad property, rights and franchises has been surrendered to the said purchasers, and that it has been wholly ousted and evicted from all and singular the premises, rights and franchises leased to it as aforesaid; and it relies upon the cancellation of said lease, and the ouster and eviction as aforesaid, as a full and perfect answer to the relief sought in the bill and amended bill of complaint filed in this case."

(Printed Rec., 160.)

Replication was filed and the cause referred to a master, who reported among other things that all the material allegations of said bill of complaint were sustained by the

proofs, that there was due the bridge company from the Pittsburghand Pennsylvania Companies as their one-fourth part of the ascertained deficiency shown to exist in the receipts of the bridge company from the 1st day of September, 1874, to the 1st day of March, 1883, the principal sum of $118,076.89, and

"That said Columbus, Chicago and Indiana Central Railroad was sold and conveyed to Wm. L. Scott and others, trustees, under decree of foreclosure entered on the 23d day of November, A. D. 1882, in the United States Circuit Court, and that subsequently thereto, to wit: on the 17th day of March, A. D. 1883, said trustees conveyed same to the Chicago, St. Louis and Pittsburgh Railroad Company."

To the master's report the Pittsburgh and Pennsylvania Companies filed among others, the following exceptions:

"II. For that the said master has erred in finding that the material allegations in complainant's bill of complaint are sustained by the proof."

"IV. For that the said master's finding of the sum of $118,076.89 against the Pittsburgh, Cincinnati and St. Louis Railway Company, as lessee of the Columbus, Chicago and Indiana Central Railway Company, is clearly erroneous, said lease having long since ceased to exist; and against the Pennsylvania Railroad Company as its guarantor, is unsustained by the proof and unjustifiable on any construction of the alleged agreements."

"XII. For that the Pittsburgh, Cincinnati and St. Louis Railway Company was ousted and evicted on the 1st day of October, 1874, and has ever since remained wholly ousted and evicted from its lease and amended lease of the Columbus, Chicago and Indiana Central Railway, and from all gains, profits and income thereof, and from the possession thereof under said lease and amended lease by title antecedent in time and superior in law to that of the lessor thereof, namely, by judicial orders made in proceedings for receivership, foreclosure and sale of said railway under the mortgage described in complainant's bill of complaint."

January 21, 1884, the Circuit court overruled said exceptions, confirmed the master's report and entered a decree in conformity thereto.

The Pittsburgh and Pennsylvania companies took separate appeals from the decree to this court, where the same was in all respects affirmed. (131 U. S., 371.)

It was contended by the appellants in this court that the lease and amended lease, and with them all liability under the bridge contracts were determined by eviction January 1, 1875.

The bill in the present case is the same in substance as that in the former case. Its only object is to recover deficits occurring since March 1, 1883, upon the same contracts upon which deficits were recovered in the former suit. The bill sets forth the proceedings in that case, showing the issues therein presented and decided. It, with its exhibits and the answer with its exhibits, contain all the pleadings and the decrees in the former case.

The eviction set up by appellants in their sworn answer in this case is as follows:

"*Thirdly.* The Pittsburgh Company remained and was in undisturbed possession of the railroad property and premises so as aforesaid alleged to have been leased to it by the Columbus Company to and until the 17th day of March, 1883, when it was wholly dispossessed of the same, and evicted therefrom and from all rights under said alleged lease and amended lease and contract by the Chicago, St. Louis and Pittsburgh Railroad Company, to which the same had been conveyed by William L. Scott, Charles J. Osborn and John S. Kennedy, who had purchased the same at judicial sale under the decrees of foreclosure described in said bill of complaint, and to whom the said title had been confirmed and ordered by this court to be conveyed accordingly; that the title so conveyed to the said Chicago, St. Louis and

Pittsburgh Railway Company was the title of all parties to foreclosure suits instituted and prosecuted in this court and in the Circuit Courts of the United States for the District of Indiana and the Southern District of Ohio, by James A. Roosevelt and William R. Fosdick, trustees under the said mortgage made by the said Columbus Company, and described in the said bill of complaint against the said Columbus and Pittsburgh Companies and the Pennsylvania Railroad Company, which mortgage was made, executed and delivered and bonds thereunder were issued and sold prior to the commencement of said suits and prior to the execution of said alleged lease and amended lease and contract and prior to the acquisition of any rights thereunder, if any were so acquired by the party thereto, and prior to the said original bridge contract and any amendment thereto or modification thereof by virtue of which eviction the said Pittsburgh Company and the Pennsylvania Company lost and ceased to have any right, title or interest to said railway premises, property and franchises in or under said lease or amended lease and became relieved thereby from all obligations, duties and liabilities imposed by the ninth clause of said lease, and by the said requests, or either of them, and by the said original bridge contract or any amendment or modification thereof.

Fourthly. That the interlocutory decrees appointing said Roosevelt and Fosdick receivers as aforesaid and directing conveyances to be made to them recited in said bill of complaint made by this court and by the Circuit Courts of the United States for the District of Indiana and for the Southern District of Ohio, in said foreclosure suits, were and each of them was subject to the direction and qualification that, until further order of the court therein, said receivers should not disturb the possession of said mortgaged premises by the said Pittsburgh Company under the lease thereof, but should collect and receive the rental payable by said Pittsburgh Company or by the Pennsylvania Company, the guarantor in said lease mentioned, under and in pursuance to the provisions of said lease, and should apply the same in such manner as should be provided by the further order of said court.

Fifthly. That during the prosecution of said foreclosure suits, in the last paragraph of this answer described, no order was at any time made by any of said Circuit courts that said receivers should disturb the possession of said mortgaged premises by said Pittsburgh Company, until and unless the decrees for the confirmation of said sale, and for the making of said deed to said Scott, Osborn and Kennedy, purchasers aforesaid, and that they be put in possession of said mortgaged premises so by them purchased with the right to affirm or disaffirm said lease and amended lease, and their disaffirmance thereof, which lease and amended lease they did on or about March 1, 1893, disaffirm, and not sooner, be held to be orders disturbing the possession of said Pittsburgh Company; but on the contrary, the said Pittsbugh Company continued in peaceable possession of said premises until the eviction hereinbefore described, on the seventeenth day of March, 1883, as aforesaid.

Sixthly. That by decree of the Circuit Court of the United States for the District of Indiana, made and entered on the 27th day of April, 1876, in a certain cause then pending in said court in equity, being the same suit described in the bill of complaint filed herein, wherein the Pittsburgh Company was complainant, and the said Columbus Company, and the said James A Roosevelt and William R. Fosdick, the Pennsylvania Railroad Company, and James Pullan were defendants, it was ordered, adjudged and decreed that the said Pittsburgh Company should on or before the 1st day of June, 1876, and thereafter, from time to time, pay to the credit of said cause into the National Bank of Commerce of New York, as a deposit in the name of James A. Roosevelt and William R. Fosdick, who had before that time been appointed receivers in said foreclosure suits, to the credit of said receivers, but not subject to be drawn out except in pursuance of the orders of said court in said cause, the sums then and from time to time thereafter admitted to be the amount of the net earnings of the Columbus Company, received and receivable by the Pittsburgh Company for and on account of its oper-

ation of said railroad from and after the 1st day of January, 1875. That said order was duly complied with by said Pittsburgh Company and deposits were made as so directed from time to time and were paid out and distributed in obedience to interlocutory decrees of said court made in said cause, from time to time until final decree as hereinafter stated. That said cause was begun by the filing of a bill and amended bill in chancery in said court by said Pittsburgh Company, against the said Columbus Company, said James A. Roosevelt and William R. Fosdick, the said Pennsylvania Railroad Company and James Pullan, and that the said Columbus Company appeared and answered therein, and the said Roosevelt and Fosdick appeared and filed their answer therein, and their cross-bill, whereto they made the said Pittsburgh and Columbus Companies, respectively, and the Pennsylvania Railroad Company defendants. That the object and prayer of the said bill and amended bill were for the recission and cancellation of said lease and amended lease, and the object and prayer of said cross-bill were for an accounting by and recovery from the Pittsburgh Company as lessee, and the Pennsylvania Railroad Company, as guarantor of the lease and amended lease aforesaid, of the amount of rental then due and to grow due during the pendency of said cause, according to the terms of said lease and amended lease. That the said Pittsburgh Company and the said Pennsylvania Railroad Company duly appeared and answered said cross-bill and in their said amended bill, and also by way of answer to said cross-bill, set up and averred the aforesaid orders for payment of rental into court and the execution thereof by compliance therewith by said Pittsburgh Company as constituting an eviction of said Pittsburgh Company of and from the leased premises aforesaid; that thereupon such proceeding were had that the cause came on for final hearing, when it was finally ordered and adjudged by said court that the same did not constitute an eviction of the said lessee from the said premises, and the complainants in the said cross-bill recovered accordingly, from which final decree, appeals were duly taken by the said Pittsburgh Company and the said Pennsylvania Company respectively

to the Supreme Court of the United States, which appeals were duly perfected and docketed therein, and afterwards, on motion of said appellants respectively were dismissed, whereby the said final decree affirming that the making and enforcement of said orders for payment of said rental were not an eviction of the said lessee from the said demised premises, became, were and are valid and binding decrees in equity and wholly unreversed, all which was fully shown in said cause in chancery instituted by said complainant in this court as aforesaid."

Printed Record 65.

The Bridge Company was not a party to the foreclosure proceedings.

ARGUMENT.

The decree of the Circuit court in the former case between these same parties and its affirmance in this court has forever settled the question that the eviction then pleaded was not and never could be in that or any other court a defense to the claim of the Bridge Company, and the eviction now pleaded is the same as in the former case.

It is a rule of universal law that a matter once decided is conclusive in another suit between the same parties.

2 Bouv. L. Dict., 579.
Wood v. *Jackson*, 8 Wendell, 38.
1 Greenleaf Ev., Sec. 522.

A fact which has been directly tried and decided by a court of competent jurisdiction cannot be contested again between the same parties in the same or any other court. The construction of a contract determined in an action between the parties is conclusive on them in another action on subsequently accruing claims on the same clauses. *Cromwell* v. *County*, 94 U. S., 351, 353; *Beloit* v. *Morgan*, 7 Wall., 619; *Stockton* v. *Ford*, 18 Howard, 418; 4 G. Greene (Iowa), 317; Abbott's Trial Ev., p. 828, Sec. 6.

The law will not allow the same cause of action to be twice litigated. *Young* v. *Black*, 7 Cranch, 567; *Washington Packett Co.* v. *Sickles*, 24 Howard, 344; Wells on Res Adjudicata and Stare Decisis, Secs. 2, 4 and 5; *Bates* v. *Spooner*, 45 Ind., 493; *Kelly* v. *Donlin*, 70 Ill., 385.

If parties have had a hearing and opportunity of ascertaining their rights they are concluded by final decree, so far as it affects rights presented to the court and passed upon.

Bank U. S. v. *Beverly*, 1 How., 148, 149.
Smith v. *Kernochen*, 7 How., 216.
Lewis v. *Brown Township*, 109 U. S., 162.
Lumber Co. v. *Buchtel*, 101 U. S., 638.

It is unnecessary to multiply authorities upon this point.

Lest there should be any misapprehension as to what was decided in the former case, and the grounds of the decision, this court said in the conclusion of its opinion:

"The sole ground of our decision is that the bridge contract is independent of the lease, and is valid and binding as between the parties to this suit, whether the lease is valid or invalid. This being so, the question argued at the bar, whether the appellants, by reason of eviction, are no longer liable on the lease, becomes immaterial, and the judgment of the Circuit court in a former suit, affirming the validity of the lease, has no effect upon our decision for the same reason, as well as because the Bridge Company was not a party to that judgment, and therefore neither bound by it nor entitled to the benefit of it.

Decree affirmed."

One would have supposed in this explicit declaration of this court, the Circuit court of appeals, an inferior tribunal, would have found an answer to their first question, as to whether they were at liberty to consider or sustain the defense of eviction pleaded in this case. If the question whether the appellants by reason of eviction are no longer liable on the lease was immaterial, why should the inferior court consider it, and above all doubt whether it ought not to sustain it?

In the case of *Lovel* v. *Craigan*, 136 U. S., 134, 157, this court held that when the same questions had previously been before the court, "while the plea of *res ad-* "*judicata* is not strictly applicable, the court should make "the same disposition of the controversy which was made "then."

But in this case it is insisted that the question of eviction now pleaded is *res adjudicata* by the decree in the former case. The eviction then pleaded was by the same foreclosure proceedings now pleaded, and it appears from the master's report in that case that the Columbus Railway was sold and conveyed to Scott and others, trustees under decree of foreclosure entered on the 23d day of November, 1882 (printed Rec., 170), and the answer of appellants states that the purchaser gave notice of the termination of the lease February 21, 1883, and that thereby said lease came to an end and was avoided and ceased to have any force and efficacy whatever. (Printed Rec. 162.)

If the termination of the bridge contract depended upon the termination of the lease, there could not have been a recovery in the former case up to the first of March, 1883, because, whether the entry under paramount title, *nunc pro tunc*, related back to the commencement of the foreclosure proceedings or not, the lease certainly terminated when Scott and his associates, the purchasers at the foreclosure sale, exercised their option and annulled the lease, which was February 21, 1883.

The termination of the lease prior to March 1, 1883, having been set up by the appellants as a defense in the former case and overruled, and a decree entered in favor of appellee for deficiencies to that date, estops the appel-

lants from setting up in this case the termination of the lease as a defense. The time of taking possession by the Chicago, St. Louis and Pittsburgh Railroad Company, to which the purchasing trustees subsequently conveyed, is immaterial. The lease had previously terminated and if the Pittsburgh, Cincinnati and St. Louis Railway Company continued in possession after that time, it was by the permission and as the tenants of the purchasers who, in pursuance of the option given them by the foreclosure decree, had previously terminated the lease. Besides, the Pittsburgh Company, pleading the foreclosure decrees, eviction and ouster in its answer in the former case, averred "that in accordance with said decrees, possession "of said railroad property, rights, and franchises, has "been surrendered to the said purchasers, and that it "has been wholly ousted and evicted from all and sin-"gular the premises, rights and franchises leased to it." Shall it now be permitted to deny what it there averred, and its Vice-President swore to? Having had the benefit of the same defense once, shall it be permitted to make it again?

Secondly, the effect of any eviction is *res adjudicata* for another reason.

In the former case between these parties the appellants filed separate amended answers substantially alike. That of the Pittsburg Company was as follows:

"That the Columbus, Chicago and Indiana Central Railway Company, defendant herein, and the owner of the line described in the leases mentioned in complainant's bill, dated respectively January 22, 1869, and February 1, 1870, had not on said dates authority or power by the laws of the State of Indiana to execute any such lease

and contract for the demise and lease of its railroad within the State of Indiana to this defendant. (Rec., 157, folios 450, 451.)"

The defense of *ultra vires* set up by these amended answers, was overruled by this court in the former case between these parties. It necessarily was overruled, either because its claim that the lease was invalid was unfounded, or because, if such claim was well founded, the fact was immaterial. The opinion of this court shows that such defense was overruled because immaterial, but from the decision alone it necessarily follows that it was for that reason, immateriality alone, that it did not prevail, since no proposition is better settled in this court than that railroad companies of Indiana have no general leasing power.

Penn. R. R. v. *St. Louis, etc., R. R.*, 118 U. S., 630.

If it is immaterial whether the appellants were ever liable upon the lease, it is clearly immaterial whether having been liable they have ceased to be so.

The question, whether the liability of the appellants under the lease is material, having been raised by the pleadings in the former case and actually considered and decided by this court, is, between the parties to this suit, strictly *res adjudicata*. Since this matter is *res adjudicata*, the first question certified must be answered in the negative and the second, at least so far as applicable to the pleadings in this case, in the affirmative.

Thirdly. A conclusive reason why the first question propounded should be answered in the negative is furnished by the sworn answer of the appellants in this case,

denying that they or either of them ever had possession of the Columbus Railway by virtue of the lease, in the following words:

"These defendants each for itself, and not for its co-defendant, deny that on the 29th of January, 1869, or at any other time before or since, they, or either of them, became possessed of the railway and property of the said Columbus Company by virtue of a lease and contract made by the said Columbus Company to and with these defendants, or either of them. But, on the contrary, they aver that while it is true that at or about the said date the said Pittsburgh Company did become possessed of the said railway and property of the said Columbus Company, the said Pennsylvania Company never had such possession, and that the said possession of the Pittsburgh Company was not by virtue of said lease and contract." (Printed Rec., 47, 48.)

How was it possible to evict the Pittsburgh Company from the possession of premises held under a lease of which it never had possession under a lease, or how could the termination of the lease operate to oust, or evict the Pittsburgh Company from the possession of the Columbus Railway, which was never possessed or held by virtue of the lease?

The appellants are estopped by the denials in their answer from setting up a defense diametrically opposed to those denials, and when an attempt is made to set up such a defense contrary to the admitted facts, no court is at liberty to consider or sustain it.

II.

The answer to the second question, on which the instruction of this court is asked, is clearly and emphatically given by this court in its opinion in the former case, wherein it says:

"Whether in view of the previous decisions of this court the lease from the Indiana Central Company could be upheld it is unnecessary to consider, because the validity of the bridge contract does not appear to us to depend upon the validity or invalidity of the lease.

"The bridge contract and the lease were separate and distinct agreements. The bridge contract was in form between the bridge company and the Indiana Central Company. The lease was between the Indiana Central Company and the Pittsburgh and Pennsylvania companies, and the bridge company was not a party to the lease."

Lest there should be any misapprehension of the grounds on which the former case was decided, this court took occasion in the conclusion of its opinion to say:

"The sole ground of our decision is that the bridge "contract is independent of the lease, and is valid and "binding as between the parties to this suit, whether the "lease is valid or invalid. This being so, the question "argued at the bar, whether the appellants, by reason of "eviction, are no longer liable on the lease, becomes im-"material; and the judgment of the Circuit court in a "former suit, affirming the validity of the lease, has no "effect upon our decision, for the same reason, as well "as because the Bridge Company was not a party to that "judgment, and therefore neither bound by it nor en-"titled to the benefit of it." (*Decree affirmed*)

If any point is made clear by the decision of this court in the former case, it is that the bridge contract is independent of the lease; and that the question of the termination of the lease, by eviction, or otherwise has no effect upon the rights of the parties. It is inconceivable how this court could more clearly and definitely state the ground of its decision than it has already done. And it is amazing, in view of what this court not only decided, but said it decided, that the Circuit Court of Appeals should have doubted whether the bridge contracts were so independent of the lease as not to be affected by its termination.

But, however this may be, if the questions were now submitted to this court for the first time, whether the bridge contracts were so independent of the lease that they would not be affected, nor the defendant railway companies released from liability thereunder by the termination of the lease, by eviction or otherwise, the answer would have to be the same as was then given.

No completed bridge contract was in existence at the time the lease was executed. The railway of the Columbus company did not terminate at the bridge, nor within two hundred miles of it. It is true it was on the line of the road over which the Pittsburg and Pennsylvania companies sought to obtain traffic passing between the Atlantic and Pacific states. The only reason why the Columbus company was made use of by the appellants in entering into the contracts for the construction of the bridge was, that the contract had been under consideration and agreed to by three other railroad companies before the lease was made, and it was simpler to avoid the necessity of getting up a new contract to which

the other roads should give their consent, to have the Columbus company, that had originally proposed to enter into the contract, consummate it in their behalf. The appellants had authority under their charters to make the direct contract for the construction of the bridge, but instead of doing so they made use of the Columbus company to execute the contract for them, agreeing to assume all the liabilities and enjoy all the benefits of the contract. The Columbus company would not have entered into the contract at the time it did, except at the request of the appellants, who, although not the nominal, are the real parties in interest. The Columbus company having entered into the contract in its own name, is liable to the bridge company, and it would be no defense to the suit of the bridge company against it, to show that it had leased or turned over the possession of its road to the appellants. Had the bridge company recovered from the Columbus company the deficits it now sues appellants for, the Columbus company would have had an action to recover the amount paid from the appellants; and it would have been no defense to such suit for the appellants to show that their lease of the Columbus railway had terminated.

The contract, though in the name of the Columbus Company, was understood by all the parties to be in fact the contract of appellants, and was treated by all of them for years as creating a direct liability of the appellants to the bridge company; though in form it was the contract of the Columbus Company. As was said by this court in the former case "The conclusion is inevitable that the "Pittsburgh and Pennsylvania Companies were the real, "though not the formal parties to the bridge contract, ex-

"ecuted by the Indiana Central Company at their request "and for their benefit; and that this contract as well as "the lease bound the Pittsburgh and Pennsylvania Com- "panies, if within the scope of their corporate powers." The bridge contract was, as this court said, "signed after "the execution of the lease and the delivery of the pos- "session of the road by the Indiana Central Company to "the Pittsburgh Company, and at the formal request of the "Pittsburgh and Pennsylvania Companies, embodying an "express agreement on their part with the Indiana Cen- "tral Company to assume all the liabilities and obliga- "tions, and be entitled to all the benefits of said contract. "The reference in that request and agreement to the ninth "article of the lease, was for the purpose of defining the "extent of the liabilities and benefits assumed and perhaps "of indicating that the Pittsburgh Company alone was "bound as principal and the Pennsylvania Company as "guarantor only, but it did not make the bridge contract "a part of the lease. The reasonable inference is that, "according to the original intent, and by the subsequent "actions of the parties, the Pittsburgh and Pennsylvania "Companies were understood and treated as directly lia- "ble to the bridge company for the proportion of tolls "and deficiencies which by the terms of the bridge con- "tract was chargeable to the Indiana Central Company."

The request of the appellants to the Columbus Company to enter into the amendment of June 6, 1871, modifying the original bridge contract, out of which the obligation to pay one-fourth of the deficit in bridge receipts arises, was as follows:

EXHIBIT G TO BILL.

"*B. E. Smith, Esq., Prest. C., C. & I. C. Ry. Co.*

"SIR: Referring to the letter of the president of this company, dated February 16, 1869, requesting you, as president of the Columbus, Chicago and Indiana Central Railway Company, to enter into a certain contract for the construction of a bridge across the Mississippi river at Keokuk, Iowa, which has since been completed, we beg now to request, on behalf of the Pittsburgh, Cincinnati and St. Louis railway, the lessee of your line, and the Pennsylvania Railroad Company, party to the said lease and contract, that you will officially, as president of the Columbus, Chicago and Indiana Central Railway Company, execute and agree to certain modifications of said contract concurred in by all the others, parties to said contract, and dated June 6, 1871, it being understood that the said lessee and the Pennsylvania Railroad Company shall assume all the liabilities and obligations, and be entitled to all the benefits of said modifications, the same as if they had been specifically named and made a part of the ninth article of the said lease and contract of the Columbus, Chicago and Indiana Central Railway Company to and with the Pittsburgh, Cincinnati and St. Louis Railway Company and the Pennsylvania Railroad Company, bearing date the 22d of January, 1869.

"Respectfully yours,

THOMAS A. SCOTT,
"*Prest. P., C. & St. L. Ry. Co.*

"Approved.

J. EDGAR THOMSON,
"*Prest. P. R. R. Co.*"

"*B. E. Smith, Esq., Prest. C., C. & I. C. Ry. Co.*

"DEAR SIR: Certain further modification having this day (November 25, 1871) been agreed to by the Keokuk and Hamilton Bridge Company, in the contract between that company and the railroad companies, parties to the original and amended contracts for the use of that bridge,

we hereby request you to accept the same in accordance with the terms of the foregoing letter.

" Respectfully yours,

THOMAS A. SCOTT,

" *Prest. P., C., & St. L. Ry. Co.*

" Approved.

J. EDGAR THOMSON,

" *Prest. P. R. R. Co.*

" Philadelphia, Nov. 29, 1871."

This amendment, it will be observed, was not entered into until after the Pittsburgh company had been in possession of the Columbus railway for more than two years, and then not at the request of the Pittsburgh and Pennsylvania companies as lessees, but on behalf of the Pittsburgh company, described in the body of the request as " lessee of your line," and of the " Pennsylvania Railroad " Company," described as " party to the lease and con- " tract." The signature to the request, " Thomas A. " Scott, Prest. P., C. & St. L. Ry. Co.," does not bind the Pittsburgh company as lessee, but absolutely

The Pittsburgh and Pennsylvania companies, in their request to the Columbus company to execute the modified contract in their behalf, say: " It being understood " that the said lessee and the Pennsylvania Railroad " Company shall assume all the liabilities and obligations, " and be entitled to all the benefits of said modifications " the same as if they had been specifically named and " made a part of the ninth article of said lease and con- " tract."

The ninth article is as follows:

" ART. IX. The party of the first part hereby assigns and transfers to the party of the second part all its right and interest in its contract of the eleventh of March, A. D. eighteen hundred and sixty-eight, with the Terre

Haute and Indianapolis Railroad Company *et al.*, and its contracts with the Little Miami and Columbus and Xenia Railroad Company, the Indianapolis, Cincinnati and Lafayette Railroad Company, the Indianapolis and Vincennes Railroad Company, stock-yard track contract at Chicago, and all other of its contracts relating to other roads for transportation, copies of which are hereto annexed; and the said party of the second part assumes and agrees, at its own risk and expense, to carry out each and all said contracts according to their respective tenors and legal liabilities, receiving and enjoying all benefits to be derived therefrom; and also to indemnify and save harmless the said party of the first part, on account of its indorsements on the bonds of the St. Louis, Vandalia and Terre Haute Railway Company, and the Indianapolis and Vincennes Railroad Company."

By their request, aside from the reference to the ninth article, the Pittsburgh and Pennsylvania Companies did not agree specifically to carry out the bridge contracts, but to assume all the liabilities and obligations thereof, and in that case an action for damages would have been the only remedy of the bridge company against the Pittsbugh and Pennsylvania Companies for a failure to assume said obligations, but by the reference to the ninth article they specifically bound themselves at their own risk and expense to carry out said contracts.

It may be that under the provisions of the ninth article the Pittsburgh Company might have been compelled to specifically comply with the bridge contracts, while under the provisions of the request, without reference to the ninth article, it would only have been liable in damages for a failure to do so. The bridge contracts required the contracting railroad companies to make use in perpetuity of the bridge when constructed, to make no other contract with any other company for the passage of passen-

gers or freight across the Mississippi at Keokuk or within twenty miles thereof, and to perform divers other things besides making up deficits in tolls.

The Pennsylvania Company never was the lessee of the Columbus Railway. Though a third party to the lease and contract, it was only as a guarantor of performance by the Pittsburgh Company. One object of the reference to the lease in the request made of the Columbus Company to enter into the bridge contract, undoubtedly was to define the relation existing between the Pittsburgh Company and the Pennsylvania Company; but the request of the Pennsylvania Company was in its own right, and not as guarantor or lessee. The reference to the ninth article of the lease did not assign the bridge contract to the Pittsburgh Company, nor make it a part of the lease, but it did define, when the ninth article is read in connection with the sixteenth article of the lease, the relation of the Pennsylvania Company, both to the Pittsburgh and the Bridge Companies.

Suppose the bridge company had failed to comply with its contract to construct the bridge, and a suit had been instituted against it for such failure, would it have been any defense for the bridge company to have shown that the lease of the Columbus railway to the Pittsburgh Company had terminated? If not, then the termination of the lease is no defense when set up by the contracting railroad companies, for the rights of the parties must be reciprocal. Can it be that the lessee of property, if the Pittsburgh company is such, is at liberty to enter into a contract with a third person not a party to the lease, for the construction of works remote from the leased property, and when the works are constructed, release him-

self from his obligation to pay for them, by terminating the lease in pursuance of an option which is given him to do so?

In the request, aside from the reference to the ninth article, the Pennsylvania company jointly assumed with the Pittsburgh company all the liabilities and obligations of the bridge contracts, but by reference to the ninth article of the lease, which is to be construed in connection with the sixteenth article, the Pennsylvania company only bound itself as a guarantor that the Pittsburgh company would in good faith carry out the bridge contract, and, upon its failure to do so, and notice in writing to that effect, it would perform the same for and on behalf of the Pittsburgh company, and in that event should, at its option, be entitled to all the advantages which might accrue therefrom.

Conclusion.

The first question submitted should be answered in the negative, because the appellants are estopped by the pleadings and decree in the former case from setting up eviction in this. The fact and effect of eviction which was directly tried and decided in that case cannot be contested again between the same parties in the same or any other court.

The second proposition submitted should be answered in the affirmative, because it was necessary to the decree entered in the former case, that the court should determine whether the bridge contracts were so independent of the lease that they were not affected by its termination; and, having so determined, that termination is conclusive in this case.

If it were not so, the record shows that the bridge contracts were in nowise dependent upon the continuance of the lease, and would not be affected by its determination.

Whether the decision and decree in the former case estops the appellants from setting up eviction in this case or not, the opinion of this court in the former case, declaring in the most explicit terms that the bridge contract was independent of the lease, and that the question of eviction was immaterial, was binding on the court below. With this opinion before it, it was the duty of the Circuit Court of Appeals to follow it. No subordinate federal court is or should be permitted to question the clearly expressed opinion of this tribunal upon any point, and certainly not its opinion as to the independence or effect of contracts which it had construed in a case between the same parties.

LYMAN TRUMBULL AND
PERRY TRUMBULL,
of Counsel for Appellee.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1893.

No. 1112.

The Pittsburgh, Cincinnati and St. Louis Railway Company and The Pennsylvania Railroad Company,

Appellants,

vs.

The Keokuk and Hamilton Bridge Company,

Appellee.

On a Certificate from the United States Circuit Court of Appeals for the Seventh Circuit.

REPLY BRIEF FOR APPELLEE.

On pages seven and eight, of Judge Hoadly's brief, referring to the amended bridge contract, under which each of the four contracting railroad companies were to be charged with the deficiencies in bridge earnings, he says, "It is manifest that as to the defendant companies "it was without consideration." Judge Hoadly is mistaken in this statement. *Non constat* the Pittsburgh and Pennsylvania companies might have had a greater amount of tonnage passed over the bridge than either of the other contracting railroad companies. The fact that neither the Columbus, the Pittsburgh, or the Pennsylvania railroads reached within two or five hundred miles of the

bridge, did not preclude the passage of their cars over the bridge. In all probability the Pittsburgh and Pennsylvania companies, by reason of their through connections with other roads, expected to pass over the bridge more tonnage than either of the other roads.

The foreclosure proceedings against the Columbus company, to which the bridge company was not a party, which have been lugged into this case to relieve the appellants from their obligations to the bridge company, have no proper place in this record. The claims of the bridge company upon the appellants are not avoided by what was done by other parties in a suit between themselves, to which the bridge company was not a party. The question here is, are the appellants liable to appellee upon the bridge contracts? This court in the former case decided they were. So much is certainly *res adjudicata*. The same foreclosure proceedings were pleaded in the former case as in this case. This court necessarily decided that they did not constitute a defense, by affirming the decree against the appellants. That question, therefore, is *res adjudicata*, and the appellants are estopped from urging the foreclosure proceedings as a defense.

Eviction from possession of the Columbus road by title paramount was pleaded by appellants as a defense to the prior case, but this court, by affirming the decree, decided that such eviction constituted no defense. That question, therefore, is *res adjudicata*, and the appellants are estopped from again urging it. But counsel, on page 16 of his brief, after stating that appellants, under the affirmance by this court of the decree in the former case, and the payment of deficiencies accruing up to March 1, 1883,

asks: "Is it possible that the decree which required this "is an estoppel to the defense which originated on the "17th of March, 1883?"

Certainly not, except so far as it is the same defense. But it is an estoppel to the defense which existed and was pleaded and passed upon by the court in the former case. That it was pleaded appears from the amended supplemental answer filed in that case. (Rec., 161.) The best evidence that it was considered and passed upon by this court is to be found in the statement of the court itself. It says: "That the question argued at the bar, whether "the appellants, by reason of eviction, are no longer lia-"ble on the lease, becomes immaterial." Counsel, on page 17 of his brief, says: "Undoubtedly the opinion of "this court is authority." This being so, was it not the duty of the inferior court to follow it, without asking this court whether it was at liberty to sustain the defense of eviction? But, says counsel, "What I contend for is only "that the opinion of this court does not work by way of "estoppel." Grant it. But the necessary decision of the question in the former case does work an estoppel.

The questions of the validity of the lease and of eviction were both in issue in the former case, notwithstanding which the court held appellants liable upon the bridge contracts. How could it have done so without passing upon this question or deciding, as it did, that they were immaterial, because, as the court stated, "The validity of "the bridge contract does not appear to us to depend "upon the validity or invalidity of the lease," (131 U. S., 385.) and "The question argued at the bar whether "the appellants, by reason of eviction, are no longer lia-"ble, becomes immaterial." (Ib., 390.) If the question

of eviction for the reason stated was immaterial then, it is for the same reason immaterial now. This court decided not to consider it then; will it now instruct an inferior court to consider and sustain a defense which this court decided was immaterial, and refused to consider? The liability of the appellants upon the lease, if it ever existed, ceased long before the period to which appellee recovered in the former case. In point of fact, they never were liable upon it. The lease was *ultra vires* and void from the beginning, not being authorized by any express statute of Indiana.

Thomas v. *Railroad Co.*, 101 U. S., 719.
Pennsylvania R. R. Co. v. *St. Louis, etc., R. R. Co.*, 118 U. S., 200.
Oregon Ry. v. *Oregonian Ry.*, 130 U. S., 1.

Counsel for appellants says: "I do not claim * * * "that the bridge contract is by the letter of request "written into the lease." But he does claim that the letters of request should be treated as if the lease had been incorporated into them. That is to say, he does not claim that the bridge contract is a part of the lease, but does claim that the lease is a part of the bridge contract. The difference is less than the difference between tweedle-dum and tweedle-dee. In either events the two contracts would be a part of one whole, and would be required to be construed as one instrument; and if the lease be invalid the poison would permeate the whole, and the bridge contract too would be invalid. The contention of counsel begs the whole question. It is, are the bridge contract and the lease to be construed together? And

this question is already answered not only by the opinion, but by the decision of this court in the former case. If it were a new question, the answer could not be different from that already given, because the lease was an execue ted contract, and the various promises of the Columbus company to the appellants, contained in the lease, had already been given, and formed no part of the consideration upon which the letters of request were written. The consideration to the appellants for the letters of request was the benefits they expected to derive from the bridge contract itself, and not from promises theretofore made to them by the Columbus company, whether in the lease, or any other instrument. Counsel for appellants says: "In all bi-lateral contracts, such as this lease is, "every promise of one party is a consideration for each "promise of the other. It follows, therefore, that when "the lease was dissolved by eviction, the liability of the "lessor and guarantor to perform contracts assumed "in the *ninth* article of the lease ceased and "determined." If such liability did so cease and determine, it was *because* each of the other promises of the Columbus company to the appellants contained in that lease were part of the consideration for such assumption by the appellants. But, as already shown, not one of these promises, nor all combined, contained in the lease, formed any part of the consideration for the assumption of the bridge contract. Therefore, the reason by force of which the assumptions mentioned in the ninth article ceased and determined with the lease, has no applicability to the assumption of the bridge contract. But this matter also is covered by the former decision. If the liability upon the contracts assumed by the

ninth article of the lease ceased when the lease was dissolved by eviction, would not such liability equally cease if the lease were determined in some other manner than by eviction; and what difference does it make whether that eviction was under paramount title or not? If all liability under the ninth article comes to an end when the lease comes to an end, equally such liability under that article never existed unless liability existed under other parts of the lease. If the lease was invalid, all parts of it were invalid, when considered as a whole, and appellants were never liable under the assumptions mentioned in the ninth article. Notwithstanding which undeniable fact, it has been decided that the bridge contract is a valid contract, binding upon the appellants.

Counsel for appellants also says: "The reading of this "bill will satisfy the court that it was brought to enforce "the *ninth* and *sixteenth* articles of the lease and the as- "sumption of liability contained in the letters of re- "quest as part of the *ninth* article, and not upon "the theory of independent contract." Literally, it may be true that the object of the bill is to enforce the ninth and sixteenth articles of the lease in connection with the bridge contracts, but it does not therefore follow that the bill was not framed upon the theory that the bridge contract was an independent contract. Even if it were true, courts of equity do not refuse relief to complainants who have mistaken the theory of the law upon which their rights depend, provided they have stated sufficient facts in their bill of complaint to entitle them to relief. But, in fact, the bill is framed to enforce the liability of the appellants upon the bridge contract, growing out

of their letters of request which refer to the ninth article of the lease, making that article, not the whole lease, a part of the request, not because part of the lease, but simply because it so happens that the character in which the appellants are liable upon the bridge contract, and the absoluteness of the liability are shown in this particular place, and nowhere else. But if the ninth and the sixteenth articles of the lease had been separate intruments, the complainant would have equally claimed the benefit of them. What is the fact? The complainant finds the letters of request; it claims the benefit of the assumption of liability therein of the appellants. Were it not for the reference in these letters to another document the complainant would have claimed that each of the appellants was equally liable to it for deficiencies upon the mere fact of non-payment. But upon reference to the ninth article of the lease and contract complainant finds no reference to the Pennsylvania Railroad Company in that article. Nevertheless, the letters of request inform it that the Pennsylvania Railroad Company has assumed the bridge contract in the same character in which it has assumed certain contracts assumed in that ninth article. It proceeds, therefore, to inquire *aliunde* what is that character?

And it finds as a matter of fact by reference to the 16th article of the lease and contract, to which the letters of request stated the Pennsylvania Company was a party, that the Pennsylvania Railroad Company has agreed in writing that if the Pittsburgh Company fails to perform its agreements with respect to the traffic contracts mentioned in that 9th article, that upon being informed of such failure by the Pittsburgh Company, it, the Pennsyl-

vania Railroad Company, will make good the failure of the Pittsburgh Company. The bridge company claims the benefit of that agreement of the Pennsylvania Railroad Company upon complying with its terms, that is, upon giving notice. And it makes no difference to the bridge company when, where, or under what circumstances such agreement of the Pennsylvania Railroad Company was made. It is the fact that the Pennsylvania Railroad Company has so agreed, that is material, and not whether that agreement was a part of another contract or not.

The difficulty with the position of counsel for appellants is, that he seeks to have the letters of request interpreted as though they had said the *same* as though the bridge contract and its amendments had been specifically named and made a part of the *lease* and contract, or the same as if the bridge contract and its amendments had been specifically mentioned in the 9th article of, and made a part of, the *lease* and contract, instead of referring, as they in fact do, not to the lease and contract, but to a part thereof, namely, to the 9th article. Consistently with the former decision of this court, it is not possible to write the whole lease into the bridge contract. Is it not competent for parties entering into a contract to refer therein to a particular provision or part of another contract between other parties, without thereby adopting the whole of that other contract? The 9th article of the lease and contract by reference to it in the letters of request, may in effect have been written into these letters of request; but it is the 9th article alone and standing by itself. The liability under the bridge contract does not

depend upon any condition, nor does it cease upon the happening of any contingency, not expressed in the 9th article itself upon its face and when regarded as a separate and entire contract.

Respectfully submitted.

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